

2-3-48
No. 12026

United States
Court of Appeals
for the Ninth Circuit


UNITED STATES OF AMERICA,
Appellant,
vs.
IRENE ETHEL LAMBETH,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

[FILED]

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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OF RECORD

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Assistant United States Attorney,
United States Court House,
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WILLIAM H. HEDLUND and
ARTHUR S. VOSBURG,
909 American Bank Building,
Portland, Oregon,
Attorneys for Appellee.

In the District Court of the United States
For the District of Oregon

No. Civ. 3987

IRENE ETHEL LAMBETH,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant alleges:

I.

That at all times mentioned herein the plaintiff was and now is a citizen and inhabitant of the State of Oregon residing at 7322 S.W. Canyon Drive in the County of Washington, State of Oregon.

II.

That during the period from May 1, 1943 to and including September 18, 1944, James W. Maloney was the duly appointed and acting Collector of Internal Revenue for the State of Oregon; that subsequent to the 18th day of September, 1944 and prior to the time of filing this complaint, James W. Maloney ceased to be the Collector of Internal Revenue for Oregon.

III.

That this is an action for recovery of money paid by plaintiff to James W. Maloney, Collector of Internal Revenue for the State of Oregon, pur-

suant to notice and demand for tax assessed by James W. Maloney as Collector of Internal Revenue of the United States under the tax laws of the United States; that jurisdiction of this court is based on Section 24 (20) of the Judicial Code of the United States, Title 28, 1. Complaint. [1 *] Section 41, subdivision 20 U.S.C.A.

IV.

That on or about the 7th day of September, 1944, James W. Maloney as Collector of Internal Revenue of the United States made a jeopardy assessment against plaintiff and demanded of plaintiff the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars on account of cabaret admission taxes and accrued interest thereon claimed to be due defendant and assessed by James W. Maloney as Collector of Internal Revenue of the United States against plaintiff for the period commencing May 1, 1943 and ending July 31, 1944.

V.

That said assessment and collection for alleged taxes in the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars was and is illegal and not within the purview of the Internal Revenue Laws of the United States in that during all of the aforementioned period the plaintiff was not operating a roof garden, cabaret, or other similar place furnishing a public performance for profit, but was in truth and in fact managing and operating The Cozy Club, a private club

*Page numbering appearing at foot of page of original certified Transcript of Record.

organized under the laws of the State of Oregon as a non-profit corporation; that the said Cozy Club and the operations conducted by plaintiff were not open to the public; that during the aforementioned period prior to September 17, 1943, no facilities were provided at The Cozy Club for dancing and no dancing or other performance occurred at said club.

VI.

That plaintiff paid said assessment under protest on the 18th day of September, 1944; that said money is now held by defendant for the use and benefit of plaintiff; that subsequent to the 18th day of September, 1944 and on or about the 28th day of September, 1944 plaintiff filed a claim for [2] refund for the aforementioned sum; that said claim for refund was denied by the Collector of Internal Revenue by registered letter mailed to plaintiff on the 28th day of March, 1946.

Wherefore, plaintiff prays the court for a judgment against defendant in the amount of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, together with interest thereon from September 18, 1944, and for her costs and disbursements incurred herein.

WILLIAM H. HEDLUND,
ARTHUR S. VOSBURG,
Attorneys for Plaintiff.

(Acknowledgment of Service.)

[Endorsed]: Filed December 18, 1947.

[3]

[Title of District Court and Cause.]

ANSWER

Now comes the defendant, the United States, by its attorney, Henry L. Hess, United States Attorney in and for the District of Oregon, and for its answer to the complaint filed herein alleges and says:

I.

Admits the allegations contained in paragraphs numbered I and II thereof.

II.

Admits the allegations contained in paragraphs numbered III and IV thereof, except that it is alleged that the money sought to be recovered herein representing cabaret taxes and accrued interest thereon paid by plaintiff was assessed against plaintiff by the Commissioner of Internal Revenue and not by James W. Maloney, as Collector of Internal Revenue, as alleged in said paragraphs.

III.

Denies the allegations contained in paragraph numbered V thereof.

IV.

Denies the allegations contained in paragraph numbered VI thereof, except that it is admitted that on or about September 28, 1944, plaintiff filed a claim for refund of the taxes sought to be recovered herein. Further answering said paragraph, the defendant alleges that [4] the claim for refund filed by plaintiff was rejected by the Commissioner of Internal Revenue and not by the Collector of

Internal Revenue by registered letter mailed to plaintiff on February 11, 1946, instead of on March 28, 1946, as alleged in said paragraph.

Wherefore, the defendant prays that the complaint be dismissed with costs to be assessed against plaintiff.

/s/ HENRY L. HESS,
United States Attorney,
Attorney for Defendant.

/s/ FLOYD D. HAMILTON,
Assistant U. S. Attorney.

United States of America,
District of Oregon—ss.

I, Floyd D. Hamilton, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service of the foregoing Answer on the plaintiff herein, by depositing in the United States Post Office at Portland, Oregon, on the 16th day of February, 1948, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid, addressed to William H. Hedlund and Arthur S. Vosburg, Attorneys of record for plaintiff, 909 American Bank Building, Portland, Oregon.

FLOYD D. HAMILTON.

[Endorsed]: Filed February 16, 1948.

[5]

[Title of District Court and Cause.]

PRETRIAL ORDER

The above entitled action came on regularly for pretrial conference before the Hon. Claude McCulloch, one of the judges of the above entitled court. Plaintiff appeared in person and by and through Arthur S. Vosburg and William H. Hedlund, her attorneys, and defendant appeared by and through Floyd D. Hamilton, Assistant United States Attorney; whereupon after pretrial conference the following proceedings were had:

JURISDICTION

This action was brought and the jurisdiction of this court is invoked by plaintiff under Sec. 24 (20) of the Judicial Code of the United States, Title 28, Sec. 41, Subdivision 20, U.S.C.A. to recover moneys allegedly, illegally, excessively, and erroneously assessed as cabaret taxes and collected from plaintiff by defendant.

AGREED FACTS

I.

That at all times mentioned herein the plaintiff was and now is a citizen and inhabitant of the State of Oregon, residing at 7322 S.E. Canyon Drive, in the County of Washington, State of Oregon.

II.

That during the period from May 1, 1943 to

and including September 18, 1944, James W. Maloney was the duly appointed and acting Collector of Internal Revenue for the State of Oregon; that subsequent to the 18th day of September, 1944 and prior to the time of the filing of this complaint, James W. Maloney ceased to be the Collector of Internal Revenue for Oregon. [6]

III.

That on or about the 7th day of September, 1944 the Commissioner of Internal Revenue of the United States made a jeopardy assessment against plaintiff and demanded of plaintiff the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, on account of cabaret admission taxes and accrued interest thereon claimed to be due defendant and assessed by said Collector of Internal Revenue of the United States against the plaintiff for the period commencing May 1, 1943 and ending July 31, 1944.

IV.

The plaintiff paid to defendant under protest said sum of Six Thousand and Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, being the amount of said assessment, on the 18th day of September, 1944; that on the 28th day of September, 1944, plaintiff filed a claim for refund of the taxes sought to be recovered herein; that said claim for refund filed by the plaintiff was rejected by the Commissioner of Internal Revenue by registered letter mailed to plaintiff on February 11, 1946.

V.

That the computation of the tax assessed is as follows:

Month	Income	Rate of Tax	Amount of Tax	Interest
1943				
May	\$ 914.00	5%	\$ 45.70	3.24
June	1678.60	5%	83.93	5.52
July	1617.21	5%	80.86	4.92
August	1699.10	5%	84.96	4.76
September				
1st to 17th	1252.73	5%	62.63	3.18
17th to 30th	957.97	5%	47.90	2.44
October	2443.00	5%	122.15	5.62
November	2795.95	5%	139.80	5.71
December	2835.15	5%	141.76	5.08
1944				
January	3838.10	5%	191.91	5.98
February	3685.61	5%	184.28	4.76
March	4549.10	5%	227.46	4.77
April	4656.50	30%	1396.95	22.10
May	5054.40	30%	1513.62	16.63
June	4790.50	30%	1437.15	8.37
July	5264.55	20%	1052.91	.86
			<hr/>	<hr/>
			\$6813.97	103.94

CONTENTIONS OF PARTIES

Plaintiff Contends:

That said assessment and collection for alleged taxes in the sum of Six Thousand Nine Hundred Seventeen and 91-100 (\$6,917.91) Dollars was and is illegal and not within the purview of the Inter-

nal Revenue Laws of the United States in that during all of the aforementioned period the plaintiff was not operating a roof garden, cabaret or other similar place furnishing a public performance for profit, but was in truth and in fact managing and operating The Cozy Club, a private club organized under the laws of the State of Oregon as a non-profit corporation; that said The Cozy Club and the operations conducted by plaintiff were not open to the public; that during the aforementioned period prior to September 17, 1943, no facilities were provided at The Cozy Club for dancing and no dancing or other performance occurred at said club during said period.

Defendant Contends:

That the plaintiff was operating a roof garden, cabaret or similar place furnishing a public performance for profit, and that the operations conducted by plaintiff during the said period were open to the public.

ISSUES OF FACT AND OF LAW TO BE DETERMINED

Did the operations of plaintiff between May 1, 1943 and September 1, 1944, or any portion of that period, constitute furnishing a public performance for profit at a roof garden, cabaret or or other similar place as defined by Section 1700 (e) Title 26, U.S.C.A.?

What sum of money, if any, is plaintiff entitled to recover in this action?

EXHIBITS

A list of the exhibits proposed to be introduced by plaintiff hereto marked "Exhibit A", and a list of the exhibits proposed to be introduced by the defendant is attached hereto marked "Exhibit B"

The objections of the parties, if any, to the admissibility of each of the above exhibits in evidence at the trial are reserved until time of trial.

This order supersedes the pleadings which now have no further function in the case and shall not be changed after signature or during the trial except by agreement of the parties or on the order of the court to prevent manifest injustice.

Dated April 7th, 1948.

/s/ CLAUDE McCOLLOCH,
District Judge.

Approved:

UNITED STATES ATTORNEY,
By /s/ FLOYD D. HAMILTON,
Assistant U. S. Attorney.
/s/ ARTHUR S. VOSBURG,
/s/ WILLIAM H. HEDLUND,
Attorneys for Plaintiff. [9]

EXHIBIT A

Exhibits Proposed by Plaintiff

1. Minute book of The Cozy Club.
2. Lease dated May 29, 1943 between Title and Trust Company and The Cozy Club, Inc.
3. 1944 Roster of The Cozy Club.
4. Partial list of members of The Cozy Club, 1943.

5. Applications for membership in The Cozy Club, 1944.

6. Membership card of Violet Mullins. [10]

EXHIBIT B

Exhibits Proposed by Defendant

1. Article of Incorporation of The Cozy Club.

2. Certificate of Filing Supplementary Articles of Incorporation of The Cozy Club.

3. By-Laws of The Cozy Club, Inc., adopted December 20, 1936.

4. Amended By-Laws of The Cozy Club, Inc.

5. Minutes of Special Meeting of Members of The Cozy Club, Inc., October 13, 1941.

6. Minutes of Special Meeting of Members of The Cozy Club, Inc., June 5, 1944.

7. Minutes of Special Meeting of Board of Directors of The Cozy Club, Inc., October 13, 1941.

8. Minutes of Special Meeting of Board of Directors of The Cozy Club, Inc., January 3, 1944.

9. Minutes of Meeting of Board of Directors of The Cozy Club, Inc., June 12, 1944.

10. (a) Form 11-B Treasury Department, Internal Revenue Service, November 17, 1942.

(b) Form 11-B Treasury Department, Internal Revenue Service, June 16, 1943.

(c) Form 11-B, Treasury Department, Internal Revenue Service, July 6, 1943.

11. Ledger Sheets of La Fiesta Club for year 1943.

12. Ledger Sheets of La Fiesta Club for year 1944.

[Endorsed]: Filed April 7, 1948. [11]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial before the Hon. Claude McColloch, judge of the above entitled court, on April 7, 1948, plaintiff appearing in person and by her attorneys, Arthur S. Vosburg and William H. Hedlund, and defendant appearing by and through Floyd D. Hamilton, Assistant United States Attorney. After opening statements by respective counsel, witnesses were sworn and testified on behalf of plaintiff and on behalf of defendant, and the court having heard the evidence and closing arguments of respective attorneys, took the same under advisement, and now being fully advised in the premises, makes the following

FINDINGS OF FACT

I.

That this action was brought and this court has jurisdiction under Section 24 (20) of the Judicial Code of the United States, Title 28, Section 41, Subdivision 20, U.S.C.A., to recover moneys illegally, excessively and erroneously assessed as cabaret taxes and collected from plaintiff by defendant.

II.

That at all times mentioned herein the plaintiff was and now is a citizen and inhabitant of the State of Oregon, residing at 7322 S.W. Canyon Drive, Washington County, Oregon.

III.

That during the period from May 1, 1943 to and including September 18, 1944, James W. Maloney was the duly appointed and acting Collector of Internal Revenue for the State of Oregon; that subsequent to the 18th day of September, [12] 1944 and prior to the time of the filing of the complaint herein, James W. Maloney ceased to be the Collector of Internal Revenue for Oregon.

IV.

That on or about the 7th day of September, 1944 the Commissioner of Internal Revenue of the United States made a jeopardy assessment against plaintiff and demanded of plaintiff the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars on account of cabaret admission taxes and accrued interest thereon claimed to be due defendant and assessed by said Commissioner of Internal Revenue of the United States against the plaintiff for the period commencing May 1, 1943 and ending July 31, 1944.

V.

That plaintiff paid to defendant under protest said sum of Six Thousand and Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, being the amount of said assessment, on the 18th day of September, 1944; that on the 28th day of September, 1944, plaintiff filed a claim for refund of taxes sought to be recovered herein, together with interest thereon as provided by the Internal Revenue Code and the regulations promulgated thereunder; that said claim for refund filed by the

plaintiff was rejected by the Commissioner of Internal Revenue by registered letter mailed to plaintiff on February 11, 1946.

VI.

That during all times for which the assessment was made by defendant against the plaintiff the plaintiff was not operating a roof garden, cabaret, or other similar place furnishing a public performance for profit; that at said time plaintiff was managing The Cozy Club, a private club organized under the laws of the State of Oregon as a non-profit corporation; that said The Cozy Club and the operations conducted by plaintiff were not open to the public and admission to the club room premises was open only to members of The Cozy Club and their guests; that admission to The Cozy Club premises was refused to persons other than members of The Cozy Club and their guests, and said premises were operated as a private and not a public establishment. [13]

And the court concludes:

CONCLUSIONS OF LAW

I.

That this court has jurisdiction of the controversy herein.

II.

That during all times for which the assessment was made by defendant against the plaintiff the plaintiff was not operating a roof garden, cabaret, or other similar place furnishing a public performance for profit, and that the imposition of

the tax against plaintiff in the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars was not within the purview of the provisions of the Revenue Act pertaining to cabaret taxes and the regulations promulgated thereunder.

III.

That the assessment and collection of cabaret taxes and interest thereon in the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars was illegal and erroneous and not authorized by the Internal Revenue laws of the United States.

IV.

That plaintiff is entitled to judgment against defendant in the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from the 18th day of September, 1944, together with her costs and disbursements incurred herein.

Dated at Portland, Oregon, this 27th day of April, 1948.

/s/ CLAUDE McCOLLOCH,
District Judge.

(Acknowledgment of Service.)

[Endorsed]: Filed April 27, 1948.

[14]

In the District Court of the United States
For the District of Oregon

No. Civil 3987

IRENE ETHEL LAMBETH,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

JUDGMENT

This matter coming on to be heard on motion of plaintiff, Irene Ethel Lambeth, for judgment, and the court having filed its Findings of Fact and Conclusions of Law and being fully advised in the premises;

Now therefore, it is considered, ordered and adjudged that plaintiff have and recover of and from defendant the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from September 18, 1944 until such time as interest ceases to accrue under Section 284(b), Title 28 U.S.C.A., and together with her costs and disbursements incurred herein taxed at \$30.60.

Dated at Portland, Oregon, this 27th day of April, 1948.

/s/ CLAUDE McCOLLOCH,
District Judge.

Entered in Docket April 27, 1948.

[Endorsed]: Filed April 27, 1948.

[15]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Irene Ethel Lambeth, plaintiff above named,
and Arthur S. Vosburg and William H. Hedlund, her attorneys:

You and each of you will please take notice that the defendant, The United States, appeals to the Circuit Court of Appeals for the Ninth Circuit, from that certain judgment in the above-entitled cause made and entered the 27th day of April, 1948, by the Honorable Claude McColloch, Judge of the above-mentioned Court, wherein the plaintiff recovered of and from defendant the sum of Six Thousand Nine Hundred Seventeen and 91/100 (\$6,917.91) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from September 18, 1944 until such time as interest ceases to accrue under Section 284(b), Title 28, U.S.C.A., and costs and disbursements taxed at \$30.60.

HENRY L. HESS,

United States Attorney for the
District of Oregon.

/s/ FLOYD D. HAMILTON,

Assistant United States Attorney.

United States of America,
District of Oregon—ss.

I, Floyd D. Hamilton, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service of the foregoing Notice of Appeal on plaintiff herein, by depositing in the

United States Post Office at Portland, Oregon, on the 25th day of June, 1948, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid, addressed to Messrs. Arthur S. Vosburg and William H. Hedlund, Attorneys at Law, American Bank Building, Portland, Oregon, attorneys for plaintiff.

/s/ FLOYD D. HAMILTON. [17]

[Endorsed]: Filed June 26, 1948.

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON BY DEFENDANT ON APPEAL

The defendant, United States of America, having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment order made and entered herein on April 27, 1948, by the District Court of the United States for the District of Oregon, hereby designates the following points to be relied on in the prosecution of said appeal:

The District Court erred:

1. In finding that during the period involved plaintiff was not operating a roof garden, cabaret or other similar place furnishing a public performance for profit.

2. In failing to find that during the period involved plaintiff was operating a roof garden, cabaret or other similar place furnishing a public performance for profit.

3. In finding that during the period involved plaintiff was managing and operating The Cozy Club as a private club not open to the public, and that admission to its club rooms was open only to members of the club and their guests.

4. In failing to find that during the period involved plaintiff was managing and operating The Cozy Club as a cabaret, [18] roof garden or other similar place furnishing a public performance for profit.

5. In concluding that during the period involved plaintiff was not operating a roof garden, cabaret or other similar place furnishing a public performance for profit, and that the imposition of the tax against plaintiff in the sum of \$6,917.91 was not within the purview of the Revenue Act pertaining to cabaret taxes and the Regulations promulgated thereunder.

6. In failing to conclude that during the period involved plaintiff was operating a roof garden, cabaret or other similar place furnishing a public performance for profit, and that she was therefore not entitled to recover the sum of \$6,917.91 paid as cabaret tax and interest thereon pursuant to the purview of the provisions of the Revenue Act pertaining to cabaret taxes and the Regulations promulgated thereunder.

7. In concluding that the assessment and collection of cabaret taxes and interest thereon in the sum of \$6,917.91 was illegal and erroneous and not authorized by the internal revenue laws of the United States.

8. In concluding that plaintiff was entitled to judgment against the defendant in the sum of \$6,917.91, together with interest thereon at 6% per annum from the date of payment.

9. In failing to conclude that the defendant was entitled to judgment dismissing the complaint filed herein.

Dated this 27th day of July, 1948.

HENRY L. HESS,
United States Attorney for the
District of Oregon.

/s/ FLOYD D. HAMILTON,
Assistant U. S. Attorney,
Attorney for Defendant. [19]

United States of America,
District of Oregon—ss.

I, Floyd D. Hamilton, Assistant United States Attorney, hereby certify that I have made service on the plaintiff of the foregoing Statement of Points to be Relied on by Defendant, on Appeal by depositing in the U. S. Post Office at Portland, Oregon, on the 27th day of July, 1948, a duly certified copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to Messrs. Arthur S. Vosburg and William H. Hedlund, Attorneys at Law, American Bank Building, Portland, Oregon, attorneys of record for plaintiff.

/s/ FLOYD D. HAMILTON,
Of Attorneys for Defendant.

[Endorsed]: Filed July 27, 1948.

[20]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the above-entitled court:

The defendant, United States of America, hereby designates the entire record in this case to be contained in the record on appeal, more particularly described as follows:

1. Complaint
2. Defendant's Answer
3. Pre-trial Order
4. Transcript of Proceedings
5. All exhibits
6. Findings of Fact and Conclusions of Law
7. Judgment Order
8. Notice of Appeal
9. Statement of Points to be Relied on by Defendant on Appeal.
10. This designation

Dated this 27th day of July, 1948.

HENRY L. HESS,

United States Attorney for the
District of Oregon.

/s/ FLOYD D. HAMILTON,

Assistant United States Attorney.

United States of America,
District of Oregon—ss.

I, Floyd D. Hamilton, Assistant United States Attorney for the District of Oregon, hereby certify

that I have made service upon the plaintiff of the within Designation of Contents of Record on Appeal, by depositing in the U. S. Post Office at Portland, Oregon, a duly certified copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to Messrs. William H. Hedlund and Arthur S. Vosburg, Attorneys at Law, 909 American Bank Building, Portland, Oregon, attorneys of record for plaintiff.

/s/ FLOYD D. HAMILTON,
Of Attorneys for Defendant.

[Endorsed]: Filed July 27, 1948. [22]

[Title of District Court and Cause.]

STIPULATION

It is hereby agreed and stipulated by and between counsel for the respective parties, subject to the approval of the Court, that the time within which the record on appeal must be filed and the within action docketed with the Circuit Court of Appeals for the Ninth Circuit may be extended to and including September 18, 1948.

Dated this 28th day of July, 1948.

/s/ FLOYD D. HAMILTON,
Assistant U. S. Attorney
Of Counsel for Defendant.

/s/ WILLIAM H. HEDLUND,
Of Counsel for Plaintiff.

The foregoing stipulation shall be without prej-

udice to the right of the plaintiff to move for a dismissal of the appeal and shall not be construed as a waiver of any such right.

/s/ FLOYD D. HAMILTON,
Assistant U. S. Attorney
Of Counsel for Defendant.

/s/ WILLIAM H. HEDLUND,
Of Counsel for Plaintiff.

[Endorsed]: Filed July 28, 1948.

[23]

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard ex parte this day upon motion of defendant by Henry L. Hess, United States Attorney for the District of Oregon, and Floyd D. Hamilton, Assistant United States Attorney, for an order extending the time for the filing of the record on appeal and docketing the within action in the Circuit Court of Appeals for the Ninth Circuit, for the reason that the record on appeal must be filed and the within action must be docketed with the Circuit Court of Appeals by August 5, 1948, and the Clerk of this court does not have sufficient time to file the record and docket the action by that date, and, based upon the stipulation of the parties, and the Court being fully advised in the premises, it is

Ordered that the time for filing the within appeal and docketing the action be, and it is hereby, extended to and including September 18, 1948.

Made and entered this 28th day of July, 1948.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed July 28, 1948. [24]

[Title of District Court and Cause.]

ORDER TRANSMITTING ORIGINAL
EXHIBITS

On motion of the defendant and appellant herein, and good cause appearing therefor, it is hereby

Ordered that all of the original exhibits in the above case be transmitted to the U. S. Circuit Court of Appeals for the Ninth Circuit, in connection with the appeal of the above case.

Dated this 28th day of July, 1948.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed July 28, 1948. [25]

[Title of District Court and Cause.]

SUPPLEMENTAL DESIGNATION OF
CONTENTS OF RECORD
ON APPEAL

To the Clerk of the above-entitled court:

The defendant, United States of America, in addition to the documents by it designated on July 28, 1948 to be contained in the record on appeal, hereby further designates the following documents to be contained in the record on appeal, to-wit.

1. Stipulation for Extension of Time to File the Record on Appeal and Docket the Action with the Circuit Court of Appeals.

2. Order Extending Time to File the Record on Appeal and Docket the Action with the Circuit Court of Appeals.

3. Order Transmitting Original Exhibits to the Circuit Court of Appeals.

4. This Supplemental Designation.

Dated this 30th day of July, 1948.

HENRY L. HESS,

United States Attorney for the
District of Oregon.

/s/ FLOYD D. HAMILTON,

Assistant United States
Attorney.

[26]

United States of America,
District of Oregon—ss.

I, Floyd D. Hamilton, Assistant United States Attorney for the District of Oregon, hereby certify

that I have made service of the foregoing Supplemental Designation of Contents of Record on Appeal on plaintiff herein by depositing in the United States Post Office at Portland, Oregon, on the 30th day of July, 1948, a duly certified copy thereof, enclosed in an envelope, with postage prepaid thereon, addressed to Messrs. Arthur S. Vosburg and William H. Hedlund, 909 American Bank Building, Portland 5, Oregon, attorneys for plaintiff.

/s/ FLOYD D. HAMILTON,
Assistant United States Attorney.

[Endorsed]: Filed July 30, 1948. [27]

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

Dec. 18: Filed complaint.

Dec. 18: Issued summons—to Marshal.

Dec. 18: Filed affidavit of service to Atty. Genl.

Dec. 19: Filed summons with marshal's return.

1948

Feb. 16: Filed Defendant's Answer.

Mar. 1: Entered order setting for pre-trial April 5 and trial April 6, 1948. Fee.

Mar. 31: Filed motion of U. S. for production of documents.

Apr. 1: Entered praecipe U. S. for issuance of subpoena.

Apr. 1: Issued subpoena—to Marshal.

1948

- Apr. 1: Filed praecipe U. S. for issuance of subpoena.
- Apr. 1: Issued subpoena—to Marshal.
- Apr. 2: Filed (2) subpoenas with return.
- Apr. 2: Filed Motion to Produce.
- Apr. 5: Entered order resetting for trial on April 7, 1948. McC.
- Apr. 6: Filed praecipe U. S. for subpoena duces tecum.
- Apr. 6: Issued subpoena duces tecum—to Marshal.
- Apr. 7: Filed and entered pre-trial order. McC.
- Apr. 7: Record of trial before court and order taking under advisement. McC.
- Apr. 7: Filed exhibits 1 to 6a and b and 8 and 9.
- Apr. 9: Filed subpoena Duces Tecum.
- Apr. 27: Filed and entered Findings of Fact and Conclusions of Law. McC.
- Apr. 27: Filed and entered Judgment for plaintiff.
- Apr. 27: Filed cost bill of plaintiff.
- June 5: Filed transcript of proceedings of April 5 and 7, 1948.
- June 26: Filed Notice of Appeal.
- June 26: Copy of Notice of Appeal handed to Wm. Hedlund by Floyd D. Hamilton.
- July 27: Filed Statement of Points to be Relied on by defendant on appeal.
- July 27: Filed Designation of contests of record on appeal.
- July 28: Filed stipulation to extend time to docket cause in Circuit Court of Appeals.

1948

July 28: Filed and entered order extending time to docket cause in Circuit Court of Appeals to Sept. 18, 1948. McC.

July 28: Filed and entered order to transmit original exhibits to Circuit Court of Appeals.

July 30: Filed supplemental designation of record by U. S. [28]

CLERK'S CERTIFICATE

United States of America,

District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 29 inclusive constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 3987, in which Irene Ethel Lambeth is Plaintiff and Appellee, and the United States is Defendant, and Appellant; that the said transcript has been prepared by me in accordance with the designation and supplemental designation of contents of the record on appeal filed by the appellant, and in accordance with the rules of this court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designations as the same appear of record and on file in my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of the testi-

mony of April 5 and 7, 1948: taken and filed in this office in this cause, together with exhibits Nos. 1, 2, 3, 4, 5, 6-a, 6-b, 7, 8 and 9 inclusive filed in this cause.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 17th day of August, 1948.

(Seal)

LOWELL MUNDORFF,

Clerk.

[29]

In the District Court of the United States
For the District of Oregon

Civil No. 3987

IRENE ETHEL LAMBETH,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Portland, Oregon

Monday, April 5, 1948, a.m.

Before Honorable Claude McColloch, Judge.

Appearances: Mr. Arthur S. Vosburg and Mr. William H. Hedlund, Attorneys for Plaintiff. Mr. Floyd D. Hamilton, Assistant United States Attorney, appearing on behalf of the United States of America. Court Reporter: Ira G. Holcomb.

PROCEEDINGS

Mr. Hamilton: Your Honor, in the case of Lambeth vs. the United States of America, at this time

I am making a somewhat unusual request. I would like to have this case go over. It is set for pre-trial today and trial tomorrow. [1 *]

The reason for my request is this: This is a case involving the refund of a cabaret tax. The tax was paid for the period May 17, 1943, to September 17, I believe, 1944, and the plaintiff, Irene Lambeth, is now suing for a refund. There is approximately \$7,000 involved. I was advised by the Attorney-General, who prepared the answer, that the case had been thoroughly investigated by the Internal Revenue Department and that the issues were only two, and they were somewhat simple.

I had no information of the nature of my evidence and proof until about ten days ago when I discussed the matter with two deputy collectors. Since that time I have become dissatisfied with the nature of the evidence which they had for me, and I commenced an investigation of my own.

That investigation, your Honor, has necessarily not been thorough. I have had other things to do. However, I talked to several of the officials and it was not until last Friday and Saturday that certain information was conveyed to me of a rather disturbing nature.

I think that the interests of the Government would be prejudiced if we went ahead with this case at this time, I feel, not only as far as this claim involved here is concerned, but I think it may be, or could be, that the plaintiff owes the Government other taxes which have not been paid.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

The information which I obtained leads me to believe that there is a possibility that in this venture which gave rise [2] to this tax the plaintiff was associated with two people in town who are so-called members of the underworld of Portland.

The Court: You had better transpose that—members of the so-called underworld.

Mr. Hamilton: Members of the so-called underworld, yes. Besides that, your Honor, and, further, I have talked with two gentlemen who have made statements which may possibly implicate two Government officials in wrongdoing in connection with this thing.

I am not prepared to make any charges or to say that any of the things are true, but I think before the Government goes ahead with the case that it should be thoroughly investigated. I am also advised that the usual procedure in tax cases of this nature is for the Intelligence Unit of the Bureau of Internal Revenue to make an investigation. That was not done in this case. The investigation was made by two deputy collectors who are not normally investigators.

I think under the circumstances that there are a lot of things below the surface. At least, the information I have been able to develop in the last few days leads me to believe that there is a lot below the surface that does not meet the eye. I think that matter should be settled before we go ahead with the case.

I realize that my request comes at a late mo-

ment. I did not have any of this information until Friday or Saturday— [3]

Mr. Vosburg: I had no intimation, your Honor, that counsel was going to make any request for a postponement until approximately 9:30, when counsel called me over the telephone and gave me a nebulous statement that he thought he should have a continuance, without giving any definite reasons therefor.

I cannot conceive that the more or less nebulous reasons which he gives now are sufficient grounds for a continuance. I take it counsel says that there may have been a wrong perpetrated against the United States, a conspiracy or some sort of thing. I do not see how the trial of the civil matter is in any manner going to affect any nebulous conspiracy or wrongdoing which counsel contends has taken place. If there has been a wrongdoing, as counsel seems to indicate, without giving us any definite idea as to what it is, I think the trial, if anything, is going to clarify counsel's ideas and it certainly will not prejudice any possible criminal action.

Besides the nebulous character of the charges made, there are some practical considerations. This case has been pending for a long time. It so happens that the plaintiff in this case is leaving this state and is only waiting here until the time of this trial. In addition, your Honor, we have an important witness who is remaining here at considerable expense to him and also considerable in-

convenience to him. We have brought him down to testify in this case.

The Court: From where? [4]

Mr. Vosburg: From Hanford, the Atomic Bomb Project.

I see no reason, your Honor, why this trial should not proceed. The civil issues can be determined here and certainly that cannot be to any prejudice of the Government. I certainly resist a continuance on no more stable grounds than have been presented to your Honor.

The Court: What is involved?

Mr. Vosburg: A little under \$7,000, your Honor. This covers a period from May 1, 1943, to September 1, 1944.

The Court: I will talk to you about it later in the morning.

(The Court then proceeded to the transaction of other business.)

The Court: Is there more to be said other than what has been said on the question of a continuance?

Mr. Vosburg: I do not think there is anything more, your Honor, except I can say this: The only issue in this case is the issue of whether or not the plaintiff in this case was conducting a public performance for profit. That is the sole issue to be determined by this Court. I do not understand how, if there are any additional taxes to be assessed, that would in any way affect the determination of this particular case. If there are some more taxes that have not been paid, they can be assessed. The

simple question before your Honor in this case is whether or not they were conducting a public performance for [5] profit, and the innuendo about possible criminal matters has nothing whatsoever to do with it. I think the case should be tried.

Mr. Hamilton: If I did not make it clear, your Honor, I will do so now, that the matters I referred to have a bearing on the issues in this case. They have a bearing on the evidence available and what evidence will be available.

The Court: The Government charges this was a public performance. Do you deny it?

Mr. Vosburg: I suppose the Government originally did charge that. In fact, they made a tax assessment, but in this case the plaintiff contends that they were conducting a private club and the Government has denied that.

The Court: That is what you understood to be the issue in the case, and the sole issue, Mr. Vosburg, before Mr. Hamilton spoke?

Mr. Vosburg: Yes, your Honor. I still think that is the only issue. As to any possible criminal violations, the Government certainly can proceed.

The Court: What about this motion for the production of documents? Is there any difficulty about that?

Mr. Vosburg: No, your Honor. I think I have satisfied every request made upon me, and counsel has only made one request to produce our books, and Mr. Hamilton says he has the books—the Government has had the books during the last two years, except [6] certain books. It seems Mr. Ham-

ilton hasn't had a chance to examine them. I have asked for the production of a letter dated September 18, 1944. I don't know whether Mr. Hamilton has that letter or not, but he has advised me he would not object to our using a copy. Otherwise, your Honor, as far as the production of documents is concerned, I have complied with and will comply with every request made by Mr. Hamilton. Mr. Hamilton has done the same with me.

The Court: How many witnesses will you have?

Mr. Vosburg: I will have just four. The case will not take very long.

The Court: There will be a jury here in the morning, and this case will follow. Anyhow, we will start in with this case and I will decide that question about a continuance, Mr. Hamilton, later. Oftentimes we can start in with a case and it opens up differently than people expect.

Mr. Hamilton: The only thing I would like to say, your Honor, is that, as matters now stand, there will be nothing I know develop during the trial of the case, with the information I now have, which would help your Honor in deciding the question at all.

The Court: Anyhow, we will hear what the plaintiff has to offer. We have to do that sooner or later anyhow. [7]

April 7, 1948, 10:00 o'clock a.m.

Mr. Hedlund: At this time I would like to present to the Court the pre-trial order which has been agreed upon between us. I might explain to your Honor that we have marked the exhibits, not

in accordance with the pre-trial but in accordance with what actually developed.

The Court: As long as you can satisfy the Reporter and the Clerk it is all right with me.

Mr. Hedlund: I think they are satisfied.

The Court: Proceed.

Mr. Vosburg: May it please the Court, I want to apologize for my physical condition. I have developed a miserable cold and am also a little hard of hearing. I might have difficulty in hearing your Honor. I am afraid I was a little bit too zealous in opposing the Government's motion for a continuance. If I had been a little more diplomatic, I would have agreed to it and possibly would feel a little better.

The Court: You have an able associate, Mr. Vosburg.

Mr. Vosburg: I know that.

The Court: He has won some very difficult tax cases here, hairline cases.

Mr. Vosburg: I don't know whether you would care to have us make a short statement or not. [8]

The Court: As you wish.

Mr. Vosburg: I think it might be helpful.

(Thereupon opening statements were made by counsel for the respective parties.)

Plaintiff's Testimony:

IRENE LAMBETH,

the plaintiff herein, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vosburg:

Q. Your name is Irene Ester Lambeth?

A. Irene Ethel Lambeth.

Q. You are the plaintiff in this case?

A. Yes.

Q. In December of 1941, where were you located? A. 1017 Southwest Sixth Street.

Q. Speak louder.

A. 1017 Southwest Sixth Avenue.

Q. What city? A. Portland, Oregon.

Q. No, I said in the spring and summer of 1941, where were you? A. In Eugene.

Q. What business were you in?

A. Restaurant.

Q. Where were you born? [9]

A. Stevensville, Montana.

Q. Montana? A. Yes.

Q. In Montana, before coming to Oregon, did you have occasion to know Dr. Stevens, or who later became Dr. Stevens? A. Yes.

Q. And A. A. Lambeth? A. Yes.

Q. You knew them as boyhood companions?

A. Yes.

Q. In October, 1941, did you have occasion to become connected with The Cozy Club?

A. Yes.

(Testimony of Irene Lambeth.)

Q. Who first made contact with you in regard to accepting a position with that club?

A. Mr. Stevens and Mr. Church, both.

Q. What was Stevens' name?

A. Dr. Paul Stevens.

Q. Paul Stevens? A. Yes.

Q. Is that the Stevens you knew when you were a young girl in Montana? A. Yes.

Q. You knew also Mr. A. A. Lambeth, I believe, in Montana? A. Yes. [10]

Q. What proposition did Dr. Stevens make to you in regard to the Cozy Club?

A. Well, when I first talked to him about it, he told me Mr. Church was going into the service, the armed service, which he later did, and that they wanted a new manager for the club. That was the first conversation about it. Then, later, I came to Portland to find out about it and entered into an agreement later on that year.

Q. Was Mr. Church that you mentioned the then present manager of the Cozy Club?

A. I think he was, yes, for several years.

Q. You came to Portland and saw Mr. Church?

A. Talked with Mr. Church, yes.

Q. Did you make any deal with Mr. Church?

A. Yes, I did.

Q. What deal did you make with Mr. Church?

A. That I would take over the club, as manager of the club, the same as he had it.

Q. You bought certain equipment?

A. Yes, that he owned.

(Testimony of Irene Lambeth.)

Q. That Mr. Church owned? A. Yes.

Q. What arrangement at that time did you make with the club towards the profit or the money that you were going to receive for operating the club? [11]

A. The profit derived from the club was my salary.

Q. What do you mean? Just tell what it was?

A. Well, from the operation—I mean by selling mixes and that sort of thing. The only remuneration from it, besides membership, was from selling the mixes over the bar.

Q. Do I express it correctly when I say you were to pay all the expenses?

A. All expenses.

Q. And to retain all the profits as your compensation for running the club?

A. Yes, that is right.

Q. The profit, as I take it, would come from what they would spend over the bar?

A. Yes.

Q. Or derive from the sale of lunches and things of that nature?

A. Yes. There was no lunches then.

Q. Then? A. No.

Q. How about membership dues? Did you become entitled to any of those?

A. No, I was not. The only time that we used membership dues was for some little remodeling for a further benefit of the club.

Q. How about initiation fees?

(Testimony of Irene Lambeth.)

A. They were included the same way.

Q. You had no interest in the initiation fees?

A. Not at that time, no.

Q. At the time you first became interested in this venture, which I believe was in October, 1941—

A. I think in September.

Q. September, 1941? A. Yes.

Q. —did you know whether or not the club was being operated as, and was, a private club?

A. Yes, it was, I believe.

Q. Where was the clubhouse? Where was it located? A. 1017 Southwest Sixth Avenue.

Q. 1017 Southwest Sixth Avenue?

A. Yes.

Q. Portland, Oregon? A. Yes.

Q. You have been handed Plaintiff's Identification No. 1. I will ask you if you know what that particular book is? A. Yes.

Q. What is it? A. Membership book.

Q. Would it also, in common terms, be called a minute book? A. Yes.

Q. That contains the official records of the incorporation and operation of the Cozy Club?

A. Yes. [13]

Q. Will you glance at it, all the way through it, and give us the last page on which there are any documents that were in there when you first became associated with the club in September or October, 1941? In other words, I want you to say what was in the book, the number of pages that

(Testimony of Irene Lambeth.)

were in the book, when you became associated with the club in 1941?

What I mean is this: Calling your attention to Page 21, was that in the minute book when you first contacted Dr. Stevens and Mr. Church?

A. Yes.

Q. What about Page 22?

A. That was there when we started.

Q. That was not in there when you became manager? A. Apparently not.

Q. Is it fair to say that all pages and all records from Page 21 forward were records that were in the book when you became associated with the Cozy Club? A. Yes.

Q. And the remaining records in that book, were they records or minutes of meetings that occurred after you became manager and operator of the Cozy Club? A. Yes.

Q. Do the rest of those minutes and documents correctly represent the transactions that they purport to represent?

A. To the best of my knowledge, they do. [14]

Mr. Vosburg: I offer Plaintiff's Identification No. 1 in evidence.

Mr. Hamilton: May I examine it a minute, please? No objection.

The Court: Admitted.

(Minute Book thereupon received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. Vosburg: For the purpose of the record, when you became associated with the Cozy Club in

(Testimony of Irene Lambeth.)

September or October, 1941, what was your name?

A. Irene Roskie.

Q. How do you spell it?

A. R-o-s-k-i-e.

Q. I believe you said you first became interested in the club because of Dr. Paul Stevens coming to you and talking to you about it, is that correct?

A. Yes, that is right.

Q. Was Dr. Paul Stevens a member of the club at that time? A. Yes, he was.

Q. Do you know any other close friends associated with him in the club at that time, with Dr. Stevens?

A. Yes, a lot of them—I don't quite get the point.

Q. I will withdraw the question. After you took over the management of the club, who became President? A. A. A. Lambeth. [15]

Q. A. A. Lambeth is one of the parties that you have mentioned as knowing when you were young people together in Montana? A. Yes.

Q. Mr. Lambeth became president of the club?

A. Yes.

Q. And Dr. Stevens became what?

A. Vice-president.

Q. Did you become an important member of the club?

A. I was manager of the club, yes.

Q. Were you an officer, too? A. Yes.

Q. What was your title?

A. Secretary-treasurer.

(Testimony of Irene Lambeth.)

Q. I hand you what has been marked for identification as Plaintiff's Exhibit No. 2, which is a lease dated May 29, 1943, in which the Title & Trust Company is lessor and the Cozy Club, Inc., is lessee. I direct your specific attention to the signatures on that lease and I will ask you if you know whose signatures they are that are appended thereto?

A. Yes, A. A. Lambeth and Irene E. Lambeth.

Q. That is Mr. A. A. Lambeth's signature?

A. Yes.

Q. What is the other signature under Mr. Lambeth's signature? A. Irene Lambeth.

Q. That was under date of May 29, 1943? [16]

A. Yes.

Q. Had you married Mr. A. A. Lambeth in the period of time you became manager of the club, between then and 1943? A. Yes.

Q. Was the lease executed by someone on behalf of the Title & Trust Company?

A. Yes, it was.

Q. Mrs. Lambeth, that lease covered the premises commonly known as 929 Southwest Yamhill, did it not? A. Yes.

Q. Prior to the execution of that lease, I believe the club had been operated at 1017 Southwest Sixth? A. Yes.

Q. What caused you to move and to execute this lease?

A. The lease expired and they could not—we could not renew it at the old location.

(Testimony of Irene Lambeth.)

Q. Was this a suitable place to move the club into? A. Yes, more suitable.

Q. I believe this lease is dated the 29th day of May, 1943. Do you know about what time you actually moved from 1017 Southwest Sixth to 929 Southwest Yamhill?

A. I believe it was on the 18th day of May.

Q. Please? A. 18th.

Q. Of what year? [17]

A. 18th day of May, 1943.

Mr. Vosburg: I offer what has been marked as Plaintiff's Identification No. in evidence.

Mr. Hamilton: No objection.

The Court: Admitted.

(Lease dated May 29, 1943, Title & Trust Company and Cozy Club, Inc., thereupon received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Vosburg: When you managed the club, the Cozy Club, at 1017 Southwest Sixth, what type of liquor license did you have or what type of liquor license did the club have at that time?

A. Service license only.

Q. I beg your pardon?

A. A service license only.

Q. Did you have a restaurant license?

A. No.

Q. Just as a point of information, Mrs. Lambeth, before you can have dancing on the premises, what type of license do you have to have in connection with a liquor license?

(Testimony of Irene Lambeth.)

A. You must have a restaurant license.

Q. In other words, before you can conduct dancing, you must have a restaurant license?

A. That is right. [18]

Q. Did you have a restaurant—Did you have restaurant facilities and did you operate a restaurant at 1017 Southwest Sixth? A. No.

Q. When you moved up to 929 Southwest Yamhill, I take it that was much larger and more commodious, a much larger and more commodious clubroom, was it not? A. Yes.

Q. Just briefly—I don't want you to be too minute, but just briefly, give us a picture of the clubrooms at 929 Southwest Yamhill that you moved into at that time?

A. Well, I think the seating capacity was around 150; it had restaurant facilities—

Q. I am sorry. I didn't hear.

A. We had a seating capacity of around 150; we had restaurant facilities and a barroom, a checkroom and necessary plumbing.

Q. How about cooking facilities?

A. Yes, I said restaurant facilities, and we had a kitchen.

Q. Do you know the total area of all rooms, what your floor space was?

A. Yes, I believe it was 50 by 50, approximately.

Q. Was that on the ground floor or the second floor of the building?

A. It was on the second floor.

(Testimony of Irene Lambeth.)

Q. How did you reach the second floor?

A. By a stairway. [19]

Q. What type of door did you have on the clubroom?

A. We had two doors.

Q. The first door, what was it?

A. A swinging door, a double door.

Q. That was at the bottom of the stairway?

A. Yes, sir.

Q. As you got to the top of the stairway, what kind of a door did you have?

A. A large, heavy, bolted door.

Q. Was that door equipped with a lock?

A. Yes.

Q. How did you open the door?

A. By means of a push button on the inside.

Q. It was one of these mechanical devices where, if you press the button, they go right in and if you don't press the button, you stay out?

A. It was an electric lock and it had to be pressed by the girl who operated the door to the checkroom.

Q. When you were down at 1017 Southwest Sixth, did you have any machines such as these so-called juke boxes, anything of that nature, that played records?

A. Yes.

Q. What did you do with that machine when you moved from 1017 Southwest Sixth to 929 Southwest Yamhill?

A. I believe that machine was moved to 929 Southwest Yamhill or [20] else replaced by another one.

(Testimony of Irene Lambeth.)

Q. When you were down at 1016—1017, rather, Southwest Sixth Street, did you dance any there with that machine? A. No.

Q. When you moved to 929 Southwest Yamhill, did you do any dancing?

A. No, we were not allowed to.

Q. Why not?

A. Because we did not have the proper type of license.

Q. What kind of license did you have to have?

A. We would have to have a restaurant license to dance.

Q. When did you obtain a restaurant license?

A. It was early in the fall of 1943, I believe.

Q. Would the date, the 17th day of September, 1943, refresh your memory any?

A. Well, I believe that was the date.

Q. Prior to the 17th day of September, 1943, was there any dancing? A. No.

Q. At either 929 Southwest Yamhill or 1017 Southwest Sixth? A. No.

Q. That would cover both places during the period of time between May 1, 1943, and September 17, 1943?

A. Yes. There was no dancing.

Q. No dancing. You are sure of that? [21]

A. Yes.

Q. After September 17, 1943, what can you say as to dancing?

A. Well, after we were granted a license to

(Testimony of Irene Lambeth.)

dance, then we were allowed—Then we allowed dancing.

Q. I take it in your new facilities up there you prepared food and served food? A. Yes.

Q. You had a bar? A. Yes.

Q. Did you have a locker room?

A. We had lockers, yes, not a separate room but lockers.

Q. Was there any change in your relationship with the Cozy Club from the time you operated down at 1017 Southwest Sixth Avenue until you moved up to 929 Southwest Yamhill? I mean, was your business arrangement with the club the same?

A. Yes.

Q. At both places? A. Yes.

Q. So, is this a fair statement: At 929 Southwest Yamhill you paid the expenses and retained for your emolument the profit? A. Yes.

Q. What about the membership dues and initiation fees?

A. That money was used for remodeling the club for the members. However, they did not have enough money to do that with and I loaned them money. [22]

Q. When you were down at 1017 Southwest Sixth Avenue. when you were down on Sixth Street, did the club have any special fund of its own? A. Yes.

Q. How was that fund derived? Where did it come from? A. From membership.

Q. Membership dues and initiation fees?

A. From membership dues, yes.

(Testimony of Irene Lambeth.)

Q. When you moved up to 929 Southwest Yamhill—I believe you said that was around the 17th of May, 1943? A. Yes.

Q. What did the Cozy Club, as distinguished from you, do in regard to putting the premises in suitable condition to operate as a clubhouse?

A. They were supposed to have put the club—made all remodeling, all the decorating—The club was to have paid that. However, they did not have enough money to do that with and I advanced the money myself.

Q. Did you personally loan money?

A. Yes, I did.

Q. Did you get it all back?

A. No. The club, the Cozy Club still owes me money.

Q. Did you have occasion to do some further remodeling in the fall or summer of 1944?

A. Yes, we did. [23]

Q. When the Cozy Club was on Southwest Yamhill, do you know whether they had a separate bank account, separate and apart from your account?

A. No. I don't believe they did. The reason that I say that is that the club owed me money. As I say, I had advanced money to the club and the dues that came in was paid back to me against the money I had advanced them.

Q. Did you put the money that you received from initiation fees and dues into your general account or did you have a special account for it?

(Testimony of Irene Lambeth.)

A. No, I had a special account, my own account for that.

Q. Did you keep a separate or special account on the books for the affairs of the Cozy Club which would deal with initiation fees and dues and expenditures made in renovating and improving the premises? A. Yes.

Q. Do you have that particular account book with you? A. No, I have not.

Q. Do you know where it is?

A. The Government has it.

Q. I will ask you this: When do you last remember seeing the book?

A. Mr. Kuhn took it. He was with the Internal Revenue. He picked up the book one evening last spring.

Q. When was that? [24]

A. As a matter of fact, he picked up five books in all.

Q. Mr. Kuhn with the Federal Government?

A. Yes. He is now working for the Liquor Commission.

Q. At that time he was in what department? Treasury Department, Internal Revenue?

A. I think he was with the Treasury Department, yes.

Q. And he came and got the books from you, not only of your own operation but also the books of the Cozy Club?

A. Yes, they were all together.

Q. And you have not seen them since then?

(Testimony of Irene Lambeth.)

A. No, I have not seen any of them since then.

Q. You have seen the books of account that Mr. Hamilton, representing the Government, has in the last day returned to me as being the books that you have mentioned, have you not?

A. I can see them now, yes.

Q. You saw them in my office, didn't you?

A. Yes.

Q. Other than those two books and I believe some ledger sheets, were there other books that you are referring to?

A. Yes, there are two more.

Q. What were the other two books that have not been returned to date?

A. One of them was, I believe—I have not looked at those. One of them is '41 and '42, Cozy Club; the other one was the records of all of the Cozy Club accounts. [25]

Q. You are very positive these books were taken by Mr. Kuhn? A. Yes, sir.

Q. I believe Mr. Kuhn called at your place of business to get the books? A. Yes.

Q. What did he tell you, that he just wanted them?

A. No, he told me he wanted to examine them. As a matter of fact, he went through them that day with me and then asked if he could take them to his office and work on them, and I allowed him to do it.

Q. You said yes? A. Yes.

(Testimony of Irene Lambeth.)

Q. And you never got them back until this time?

A. No, they were never returned to me.

Q. The Cozy Club was the official name of the club, as you mentioned, I believe, in accordance with its charter. Did you and the members of the club particularly like the name? A. No.

Q. To use a vulgar expression, a colloquial expression, you thought it was sort of corny?

A. It was, and there is another Cozy Club here which is a dance club, a lonesome hours deal, so we did not like it.

Q. There is another club that goes by the name "Cozy Club"? A. Yes.

Q. What name did the club decide to use for their operations on [26] Southwest Yamhill?

A. Called it the "La Fiesta".

Q. I hand you what has been marked for identification as Plaintiff's Exhibit No. 3 and ask you if you know what that is? A. Yes, I do.

Q. What is it?

A. It is a membership book.

Q. For what year? A. '41 or '42.

Q. I beg your pardon?

A. '43—'44; '43 and '44, Mr. Vosburg.

Q. Is that list alphabetically kept?

A. Yes.

Q. I beg your pardon? A. Yes.

Q. I believe the records will show at that time that R. Lambeth was president. The R. Lambeth referred to is R. N. Lambeth, am I right?

(Testimony of Irene Lambeth.)

A. R. H.

Q. It is "R" anyway? A. Yes.

Q. He was president and I believe Mrs. Sherman was vice-president and you were secretary-treasurer? A. Yes.

Q. Do you know whether the names of those three officers appear [27] in that book?

A. I doubt it.

Q. Those are the membership other than the officers?

A. You see, the officers would not have a locker number, a membership number. The numbers are all in here, the locker numbers.

Q. One of the main purposes of that book is to identify the locker number of the members, is that correct? A. That is right.

Mr. Vosburg: I offer what has been marked for identification as Plaintiff's Exhibit No. 3 in evidence.

Mr. Hamilton: No objection.

The Court: Admitted.

(Book containing alphabetical list of membership, with locker numbers, thereupon received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Vosburg: Q. I hand you a series of cards, eight in number—I have not counted them but I think there are eight—marked Plaintiff's Exhibit No. 4 for identification, and will ask you if you will examine those cards and tell us if you know what they are.

(Testimony of Irene Lambeth.)

A. It is the 1943 roster of the Cozy Club, Inc.

Q. From glancing through those, do you know whether that is complete or not? [28]

A. I would say yes.

Q. You would say yes? A. Yes.

Mr. Vosburg: We will offer what has been marked for identification as Plaintiff's Exhibit No. 4 in evidence.

Mr. Hamilton: No objection.

The Court: Admitted.

(Ten cards containing 1943 membership of Cozy Club thereupon received in evidence and marked Plaintiff's Exhibit No. 4.)

Mr. Vosburg: Q. Mrs. Lambeth, I am handing you what has been marked for identification as Plaintiff's Exhibit No. 5, which consists of a series of cards, at least twenty or probably thirty in number, bound together or, I should say, surrounded by a rubber band, and will ask you if you know what those particular documents are?

A. Yes. These are the signature cards for applications.

Q. Those could be termed applications of prospective members in the club? A. Yes.

Q. I would like for you, please, Mrs. Lambeth, to tell the Court in your own words just how membership in the club was worked, what it was composed of and all about it.

A. You mean how they gained membership?

Q. You say these are applications? [29]

(Testimony of Irene Lambeth.)

A. Yes.

Q. All right. You have a club operating and somebody makes an application. I take it you make them sign individually?

A. Yes, these are all individual signatures of the applicants.

Q. Just tell the Court, after they are signed, how you operate, what happens?

A. When they ask us to join the club—It was usually someone who had previously been in with a member of the club. That was the recommendation that we considered the best recommendation due to the fact that he had been introduced by an old member.

Q. I will ask you this: Could anybody get into the club up on Yamhill Street unless he were a member or a guest of a member?

A. None excepting law enforcement officers.

Q. What is that last?

A. Only law enforcement officers of the state.

Q. Yes, I understand. Law enforcement officers could get in.

A. Or the Liquor Commission men.

Q. Other than law enforcement officers, could anyone other than a member of the club or a guest of a member get in? A. No.

Q. The members had a right to bring guests, did they? A. Yes.

Q. After these applications were made, Mrs. Lambeth, who passed upon them during the period, say, in 1944? I believe those are 1944 applications.

(Testimony of Irene Lambeth.)

A. 1943 and '44.

Q. Who passed upon them?

A. Mrs. Sherman and myself.

Q. Who was Mrs. Sherman?

A. Secretary-treasurer at that time.

Q. Did Mr. R. Lambeth, the president, have anything to do with them?

A. During those years—

Q. I beg your pardon.

A. During these years, 1943 and 1944, Mr. Lambeth was working in the shipyards and seldom could attend meetings. However, he did when he could.

Q. Was it generally understood by the officers that you and Mrs. Sherman would process the cards? A. Yes.

Q. Tell me this: In order to first get an application in, I take it you had to be vouched for by a member?

A. You had to be introduced by a member, yes.

Q. Did everybody who was introduced by a member get into the club? A. No.

Q. Can you give the Court some idea as to the people that made applications that were or were not received? I know you can't do it mathematically but—

A. During that period of time, during the war, there were many [31] people who were rowdy and—We checked them by observation of their conduct when they were with a guest. If their conduct

(Testimony of Irene Lambeth.)

was satisfactory as a guest, they were more than likely chosen as a member.

Q. Mrs. Lambeth, I call you attention to the fact that on these application cards are a great many members? A. Yes.

Q. A great number of people who do not appear in the roster, the book which has been marked Plaintiff's Exhibit No. 3.

Is the difference between the people who made application and actually got into the roster, the difference between those figures, the people that were not admitted to the club?

A. Some of them were not admitted, and some of them were servicemen that were called away and did not come back to pick up their cards.

Q. So, the difference in number between that in the roster, Plaintiff's Exhibit No. 3, and that in the applications themselves would be the difference between—would be the people who changed their minds about joining the club?

A. Or were rejected?

Q. Or people definitely rejected by the club?

A. Yes.

Q. That is correct?

A. Yes, that is right.

Q. Mrs. Lambeth, I believe the by-laws or at least the minutes [32] in some place in our Exhibit No. 1, will show that the initiation fee for full members was \$3.00? A. Yes.

Q. Is that correct? A. Yes.

Q. During the spring—I would presume around

(Testimony of Irene Lambeth.)

January of 1944—did the Cozy Club adopt any different treatment of people that were in the military service than those that were civilians in regard to their becoming members? A. Yes.

Q. Do I make myself clear? A. Yes.

Q. All right. What new policy did you institute beginning in January, 1944, January 1, 1944, in regard to accepting members or people that were in the armed forces?

A. Changed the price of membership.

Q. I beg your pardon?

A. There was a change in the price of membership for military men; reduced it to 50 cents because they were frequently in town for just a week or two weeks, for the duration of the time they would be here. We felt it was fair to them not to charge them a full year's dues, and that is the reason for lowering the price to 50 cents for servicemen.

Q. That only applied to servicemen?

A. Yes. [33]

Q. The civilian initiation fee and dues were still \$3.00?

A. Continued to be \$3.00, yes.

Q. I notice on these applications that you have there some of them are marked "M" and some marked "C", and I note in the 1944 roster, Exhibit No. 3, some names are marked "M" and some are marked "C". Is there any significance between those initials "M" and "C"?

(Testimony of Irene Lambeth.)

A. Yes, "M" is for military and "C" is civilian.

Q. So that wherever we find an "M" after a name that is a military member? A. Yes.

Q. Or an associated or limited member and "C" refers to civilians?

A. Civilians, that is right.

Mr. Vosburg: We offer in evidence what has been marked for identification as Plaintiff's Exhibit No. 5.

Mr. Hamilton: No objection.

The Court: Admitted.

(Group of signature cards of members thereupon received in evidence and marked Plaintiff's Exhibit No. 5.)

Mr. Vosburg: Q. I hand you what has been marked for identification as Plaintiff's Exhibits No. 6-A and No. 6-B and will ask you if you know what those particular documents are?

A. Membership cards for "Club La Fiesta" and "Cozy Club, Inc."

Q. What is No. 6-A? [34]

A. A membership card, also.

Q. What year? A. 1944.

Q. I beg your pardon? A. 1944.

Q. Will you look at the card again, please, No. 6-A? A. 6-A is '43. I am sorry.

Q. What about 6-B? A. 1944.

Q. Is it a fact, Mrs. Lambeth, that the reason, as far as 6-B is concerned, we had to use this

(Testimony of Irene Lambeth.)

card which had been issued at one time because we could not find any new cards for samples?

A. Yes.

Q. As a matter of fact, what can you say, generally speaking, as to what happened to the records of the Cozy Club or the La Fiesta Club, if you please, subsequent to, say, January 1, 1945, or to the summer of 1945?

A. Those records—When I moved from the La Fiesta Club to the King of Clubs, I took those records with me. Last fall, in September, my father was ill and I was home and the records were moved, and where they have gone I just don't know. Some of them were destroyed.

Q. You will have to concede, I take it, your records are very incomplete?

A. Yes. Probably I could find a few of them if I went through [35] boxes of things.

Q. Mrs. Lambeth, during the period that you were up on Southwest Yamhill, 1943 and 1944, what can you say as to who could or could not get in those clubrooms?

A. Club members and their guests were allowed only.

Q. How did you keep the other people out?

A. We had a locked door. We just didn't allow them to come in without a membership card.

Q. Was that a rule that was rigidly enforced?

A. Yes.

Q. What type of license did you have from the

(Testimony of Irene Lambeth.)

Oregon Liquor Control Commission, on Yamhill Street?

A. A service license and a restaurant license.

Q. And a restaurant license? A. Yes.

Mr. Vosburg: Before I forget it, may I offer what has been marked as Plaintiff's Exhibits for identification 6-A and 6-B in evidence.

Mr. Hamilton: No objection.

The Court: Admitted.

(Sample membership card, "Club La Fiesta", thereupon received in evidence and marked Plaintiff's Exhibit No. 6-A.)

(Sample membership card, "Cozy Club, Inc.", thereupon received in evidence and marked Plaintiff's [36] Exhibit No. 6-B.)

Mr. Vosburg: Q. Exhibit No. 6-B does not have a locker number or a date of expiration. Normally those are on the cards, are they not?

A. Yes. They are filled in.

Q. Directing your attention to my former question, in November or December, 1944, you became involved in trouble with the Oregon Liquor Control Commission?

A. I believe it was in December.

Q. December, 1944? A. I think so.

Q. I believe you said you had a service license and a restaurant license?

A. Service license and restaurant license, yes.

Q. Are those normally the type of licenses used by people that cater to the public at large?

A. Yes.

(Testimony of Irene Lambeth.)

Q. Assuming that you were operating a private club, would that be the type of license you would need? A. No.

Q. What happened to you in December or thereabouts of 1944?

A. We were given a ticket from the Liquor Commission for refusing service to persons entitled to service.

Q. Do you know how that happened to come about, that you got a ticket? [37]

A. Yes, the girl in the checkroom refused to admit a fellow who did not have a membership card, and it happened to be a stool pigeon for the Liquor Commission.

Q. When you say "a ticket", you are referring to something like a policeman gives you for parking? A. Yes, exactly.

Q. And the Liquor Commission, if you violate their regulations, they give you a ticket, too?

A. Yes, they do.

Q. As I take it, usually the person that is in attendance at the door would know the Liquor Commission men and let them in?

A. We know most of them.

Q. But this girl made a mistake, is that right?

A. Made a mistake. She didn't let the Liquor Commission man in.

Q. Why wouldn't she let him in?

A. Because he wasn't a member.

Q. Couldn't show a card? A. No.

Q. She did not know him? A. No.

(Testimony of Irene Lambeth.)

Q. Then what happened? A. He left.

Q. After that what happened?

A. Then we were issued a ticket, a violation ticket. [38]

Q. Then what happened?

A. Then we were closed for thirty days by the Commission.

Q. How long were you closed?

A. I believe it was twenty-seven days, I think.

Q. I beg your pardon?

A. As a matter of fact, the license was revoked. It was not—It was just revoked, rather than having a ten-day suspension.

Q. As I understand your testimony here—Tell me if this is a fair statement: Your license was revoked by the Liquor Control Commission for the reason that you were operating a private club whereas the license you had would compel you to cater to the public and to take whoever presented themselves in an orderly and gentlemanly manner, is that right? A. Yes.

Q. After they canceled your license, suspended it, what happened to the Cozy or the La Fiesta Club?

A. There was nothing more to it. However, we tried on a later occasion to get the license back or to get a club license, but it was refused again.

Q. That was in the spring of 1945. After you closed up, the Cozy Club or the La Fiesta Club made one further effort to try to get a private club license? A. Yes, we did.

(Testimony of Irene Lambeth.)

Q. Were you successful or unsuccessful?

A. No, we were unsuccessful. [39]

Q. And I take it that was the end of the Cozy Club?

A. That was the end of the Cozy Club.

Q. I think the records which the Government will introduce will show that you were closed for a period of time, approximately January 20, 1945, to February 15, 1945?

A. I think that is about right.

Q. You were closed because your license was canceled?

A. Yes.

Q. Because you were operating as a private club?

A. Yes.

Q. What happened to the assets that belonged to the Cozy Club?

A. There were no assets. They were in debt.

Q. Were they indebted to you?

A. Yes, they were.

Q. How about the lease? Was it in their name?

A. Yes, it was. Yes, they would have been obligated for the lease had I not continued the operation.

Q. Did you take over the lease?

A. Yes.

Q. Generally, you continued to operate as an individual from then on, is that right?

A. Yes, I did.

Q. The Cozy Club or the La Fiesta Club was no more?

A. No.

Mr. Vosburg: May it please the Court, I would call a witness [40] out of turn, a witness who has

(Testimony of Irene Lambeth.)

to attend a funeral this afternoon, and I am going to defer any further questions of Mrs. Lambeth so as to give counsel a chance to cross-examine her now at this time, so I can still have time to call this other witness, if that is agreeable to the Court.

The Court: Maybe he does not want to cross-examine her now. Maybe he wants her to finish her testimony.

Mr. Hamilton: I would prefer to hear her out, but if you want to call the other witness it would be all right with me.

Mr. Vosburg: I do not want to commit myself, but I believe that is all the questions I wish to ask Mrs. Lambeth at this time. If I have overlooked something, I might ask the indulgence of the Court, but I have no further questions on direct at this time.

Cross Examination

By Mr. Hamilton:

Q. Mrs. Lambeth. I believe you testified you became associated with the Cozy Club in September, 1941? A. Yes.

Q. Do you recall when it was you became secretary-treasurer of the club?

A. It was some time in September or October; the exact date I don't know; in the early fall.

Q. You have been handed Plaintiff's Exhibit No. 1. Mrs. Lambeth, will you turn in that book to the minutes of the special meeting [41] of the members of the Cozy Club on October 13, 1941?

A. October 13, 1941?

(Testimony of Irene Lambeth.)

Q. Yes. A. Yes, sir.

Q. If you will look in those minutes, down about the fourth paragraph, I will ask you whether or not those are the minutes of the meeting at which you were elected secretary-treasurer of the club? Is that correct? A. Yes.

Q. At that time I take it you knew that the Cozy Club was a non-profit corporation of the State of Oregon? A. Yes, sir.

Q. Were you at that time familiar with the Articles of Incorporation of the club?

A. I believe that I was, yes.

Q. You were familiar with the bylaws?

A. Yes.

Q. I will ask you to turn now in the book to the Articles of Incorporation of the Club.

A. All right.

Q. Will you please read Article II?

A. "The object, business or pursuit of said corporation shall be the promotion and legitimate regulation of trade or commerce or any branch thereof, and/or the promotion of better acquaintance and/or closer association between those engaged therein, and the [42] development of the physical or mental capacities of its members or others."

Q. On direct examination, Mrs. Lambeth, you testified, I believe, that you doubted if your name and the names of the other officers of the corporation would be in the list of members—

A. The roster.

Q. —because you said you would not have a

(Testimony of Irene Lambeth.)

locker number. A. No, we would not.

Q. What do you mean by that?

A. The officers would not have a locker number.

Q. What kind of a locker?

A. A liquor locker.

Q. All other members had lockers?

A. All other members were assigned locker numbers. There were not that many lockers, no, but that was their identification number on their bottles that was placed in the storage space that we call lockers.

Q. It appears, then—

A. In other words, they were all set along on a shelf; they were not lockers; there were not that many lockers but that was the identification number for the member.

- Q. It appears from your testimony, then, that everybody in the club consumed alcohol, is that correct? It seems to have been essential that everybody have liquor, is that right?

A. Whether everybody consumed alcohol or not I don't know. [43]

Q. That seems, however, to have been the principal purpose of the club at 929 Southwest Yamhill?

A. Not necessarily. There were restaurant facilities, too. Some people like to eat. Besides, we had social parties and activities.

Q. I see that the objects of the corporation which you just read specify one of the purposes of it is the development of physical and mental capacities of the members. A. Pardon?

(Testimony of Irene Lambeth.)

Q. One of the purposes of the corporation is, as the Articles say, "the development of the physical or mental capacities of its members or others."

Was any of that ever attempted, outside of dancing or consumption of alcohol?

A. Yes. We had lots of other activities, I mean, such as golf and that sort of thing.

Q. What?

A. Golf matches between the members.

Q. You had golf matches?

A. Yes, we had golf matches and bowling matches. I mean they were all—by the club, yes.

Q. Were those golf matches and bowling matches conducted by the club as such?

A. They were promoted by the club, yes.

Q. Promoted by the club? [44]

A. Yes, and its members.

Q. How many golf matches do you think the club promoted?

A. Oh, I would say very many, yes; lots of them.

Q. Very many? A. Yes.

Q. How many members participated?

A. About the number, I couldn't say.

Q. I will ask you to turn to the bylaws of the Cozy Club which were adopted on December 20, 1936.

A. September, did you say?

Q. December 20, 1936. Do you find those? They should be in there.

The Court: Come up and show her.

Mr. Vosburg: In 1946?

(Testimony of Irene Lambeth.)

Mr. Hamilton: 1936.

A. 23rd of December, 1936?

Q. I direct your attention, Mrs. Lambeth, to Paragraph III. Will you please read Paragraph III to the Court.

A. "The secretary shall be the custodian of the minutes of the club and shall keep correct minutes of all proceedings and enter the same in a book to be kept by him for that purpose, and shall have custody of all reports of committees and all proceedings of the club."

Q. From October 13, 1941, until the club dissolved, you were secretary-treasurer of the club, is that correct? [45]

A. No. ?

Q. You were not? You did become secretary?

A. I was an officer of the club all the time but not always secretary.

Q. You became secretary-treasurer on October 13, 1941. When did you cease to function in that capacity?

A. I will see.

The Court: What do the records indicate? Do you have any information about it?

Mr. Hamilton: I thought, your Honor, that she was secretary-treasurer until it was dissolved.

Mr. Vosburg: The record will speak for itself.

A. Yes.

Mr. Hamilton: Q. You were secretary-treasurer of the club during the period involved in this lawsuit, were you not?

A. Yes.

Q. You were? A. Yes.

Q. You have testified that the minute book that

(Testimony of Irene Lambeth.)

you have, Plaintiff's Exhibit No. 1, correctly records the proceedings of the club, after you assumed the office of secretary-treasurer. You testified to that on direct examination. That is right, isn't it?

Mr. Vosburg: May it please the Court, she had not testified to that. She just testified that this record in these minutes [46] was true, not that they represented all the acts of the club, but that they represented her minutes, minutes that she made, and I object to the form of the question that counsel has asked. It puts a very much broader interpretation on her answer than what she actually intended to convey.

(Question read.)

The Court: She may answer that.

A. I really don't know what you want me to answer. Will you ask me again?

(Question read.)

A. To the best of my knowledge.

Mr. Hamilton: Q. I direct your attention further to Paragraph VIII of the bylaws of the club.

A. The last one I had?

Q. The one you were reading from.

A. Yes, Paragraph VIII?

Q. Yes. Would you please read that to the Court, and speak slowly so the Reporter can get it.

A. "Applications for membership shall be filed with the secretary. The officers of the club shall investigate the desirability of such applicants for

(Testimony of Irene Lambeth.)

membership and if a majority of the officers of the club shall vote for the election of an applicant, he is thereby declared a member of the club. Upon being elected to membership, each applicant shall be permitted to sign the roll of membership and pay the initiation fees prescribed.” [47]

Q. Now, Paragraph IX, I would like you to read from that, starting with the first sentence and down to “provided, however,”. Start reading the first sentence.

A. “All reputable white persons of good moral character shall be eligible to membership in this club, and shall be elected thereto on application in such manner as may be provided from time to time by the board of directors.”

Q. That is enough. According to the bylaws of the club, in order to become a member a person had to make application for membership, file it with the secretary-treasurer—who, during the period of this lawsuit, the time involved in this lawsuit, was yourself—the officers were supposed to investigate the person, and then the officers had to vote on his election, isn’t that right? According to the bylaws of your club that was the procedure you had to go through to elect a member?

A. Yes, that is true. However, during—

Q. Just a minute. That is true, isn’t it?

Mr. Vosburg: I think the witness should be permitted to explain her answer.

The Court: Not until she has answered the question.

(Question read.)

(Testimony of Irene Lambeth.)

A. That was the normal procedure.

Mr. Hamilton: Q. According to Paragraph III of the bylaws, which you previously read, you were the custodian of the minutes of the club, and you had the duty of keeping the minutes of all [48] the proceedings of the club, is that correct? That is what it says, isn't that right?

The Court: All right, if it says that.

Mr. Hamilton: Q. Now, I will ask you, Mrs. Lambeth—You have the minute book of the club before you for the period after you became secretary?

A. Yes.

Q. Will you point out to me to the Court, please, the action of the board of directors of the Cozy Club electing a person or persons to membership in the club? Point out the minutes. Are there any?

A. They are not in this book, no. However, there are—

Q. Isn't that the minute book of the Cozy Club?

A. Yes, it is.

Q. They are not in there?

A. I don't understand your question.

Q. I say, that is the minute book of the Cozy Club; that is the book in which you kept the minutes, but there are no minutes in there concerning the action of the board of directors?

A. You mean upon each individual member?

Q. Yes. A. No. That is not customary.

Q. It is not? A. No.

Q. On direct examination you testified that there

(Testimony of Irene Lambeth.)

was no dancing [49] at 929 Southwest Yamhill before September 17, 1943.

A. Until the license was granted by the Liquor Commission. I believe that was the date.

Q. Just what do you mean by "license granted by the Liquor Commission"?

A. We had a service license, and that did not entitle you to dancing. We applied for a restaurant license, which gives the privilege for dancing facilities. I don't remember which date it was granted or what date it was granted to, but we did start dancing. Prior to that time we had tables on the dance floor. It was not used.

Mr. Vosburg: May I ask counsel if he has the date that the Liquor Commission issued this license? I think that will answer the question.

Mr. Hamilton: I do not have it.

A. I do not remember just when it was.

Mr. Hamilton: Q. Up until that time—I have it as September 17, 1943. Up until that time there was no dancing, you say, at 929 Southwest Yamhill?

A. No.

Mr. Vosburg: If your Honor is going to recess at twelve, might I suggest that we interrupt at a quarter to twelve to allow this other witness to testify?

The Court: Yes.

Mr. Hamilton: Q. Mrs. Lambeth, you have been handed a book [50] of ledger sheets, the book having been marked for identification as Defendant's Exhibit 8. A. Yes.

(Testimony of Irene Lambeth.)

Q. Do you recognize that book? A. Yes.

Q. Will you tell the Court what it is?

A. Bookkeeping record.

Q. Of what?

A. Of the Cozy Club, of the operation of the Cozy Club.

Q. Which would be the same as the La Fiesta Club? A. Yes, sure.

Mr. Hamilton: I offer that in evidence.

Mr. Vosburg: I do not think this is the proper time, but I waive any objection. Whatever procedure your Honor wants to adopt is all right with me.

The Court: Admitted.

Mr. Vosburg: No objection.

(Book containing record of disbursements, Cozy Club, thereupon received in evidence and marked Defendant's Exhibit No. 8.)

Mr. Hamilton: Q. I direct your attention to the entry in that book—

The Court: It has been marked Defendant's Exhibit No. 8.

Mr. Hamilton: Q. I direct your attention to the disbursements for the week January 25 to January 30, 1943. Will you turn to [51] that? Do you find it? Would you please state to the Court what Item 11 shows? A. 11?

Q. Yes, the eleventh item in the disbursements.

A. Wax.

Q. How much? A. \$8.25.

Q. Will you please turn to the record for the

(Testimony of Irene Lambeth.)

week of May 22nd to May 31, 1943? A. Yes.

Q. Will you please read Item 9 to the Court.

A. Floor wax.

Q. Floor wax, how much? A. \$9.93.

Q. That is Item 9? That is floor wax?

A. Yes.

Q. Please read Item 11 to the Court.

A. Dance wax, \$3.58.

Q. I direct your attention to the week July 7th to 12th, 1943. A. All right.

Q. Read the item— A. 7th to 12th?

Q. Yes. July 7th to 12th. Do you have that?

A. No. July 1st to 10th and July 12th to 17th.

Q. On the sheet covering July 1st to 10th, what does Item 8 [52] say?

A. That is not the one you are looking for.

Q. Turn to July 12th to 17th.

A. I have it before me.

Q. Read Item 12. A. Loan.

Q. What? A. Loan.

Q. Is there an item that says "Dance wax"?

A. Yes.

Q. \$3.80? A. \$3.80, yes.

The Court: Let Mr. Vosburg put on his other witness now.

(Witness temporarily excused.) [53]

MRS. EDITH L. DECK

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vosburg:

Q. Your full name?

A. Mrs. Edith L. Deck,

Q. Is your husband named Russell?

A. Russell K.

Q. Do you know when, approximately, you and your husband first became members of the Cozy Club?

A. I would say about 1941, I guess. I don't remember exactly.

Q. When you first became members of the Cozy Club, the clubrooms were at 1016 Southwest Sixth?

A. 1017 Southwest Sixth.

Q. 1017 Southwest Sixth? A. Yes.

Q. Have you been a member continuously since that time? A. Yes, I have.

Q. That is, up until it blew up in 1945?

A. Yes.

Q. Will you tell the Court, please, as to whether or not in its operations and particularly during the period from April 1st or May 1st, 1943, which was approximately half a month before you moved to 929 Southwest Yamhill, from that date up until September [54] 1, 1944, do you know who could get into the clubrooms?

A. Only those who were members or those who

(Testimony of Mrs. Edith L. Deck.)

made application to become—that is, those who applied for membership.

Q. Who were guests?

A. Guests could come in if they were brought in by a member.

Q. Particularly directing your attention to 929 Southwest Yamhill, could anyone get into the club-rooms or be permitted in there who was not a member or a guest of a member?

A. I would say no.

Q. Your answer is no? A. Yes.

Q. Have you ever had any occasion to see people try to get into the clubrooms that were turned away? A. Very often.

Q. Was that a fairly common occurrence?

A. I would say it was during the wartime.

Mr. Vosburg: You may cross-examine.

Cross Examination

By Mr. Hamilton:

Q. You became a member in 1941?

A. We were members of the club previous to the time I think that Mrs. Lambeth took it over.

Q. Do you remember what year you became a member?

A. I don't remember, exactly. I would say about 1941 or 1942, somewhere along in there. [55]

Q. Who proposed you for membership?

A. Well, we applied for it ourselves.

Q. You applied for it? A. Yes.

Mr. Hamilton: That is all.

(Testimony of Mrs. Edith L. Deck.)

Redirect Examination

By Mr. Vosburg:

Q. Your husband is sitting in the back of the courtroom here? A. Yes.

Mr. Vosburg: That is all.

(Witness excused.) [56]

IRENE LAMBETH,

the plaintiff, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued)

By Mr. Hamilton:

Q. Mrs. Lambeth, I wasn't sure on cross examination what you said about the music machine you had at 1017 Southwest Sixth—on direct examination, I mean. Was that moved down to 929 Southwest Yamhill?

A. No—Well, I don't know if the same machine was moved or not.

Q. However, a music machine was moved in there? A. Yes.

Q. The music machine was in there from May 19th on—whenever you moved over, it was in there?

A. Yes, they always had a juke box.

Q. Yes. You have the ledger for 1943. Will you turn to the week January 9th to January 16, 1943? A. Yes.

Q. Please read Item No. 10.

A. January 9th to January 16th?

Q. Yes. A. "New Year's advertising."

(Testimony of Irene Lambeth.)

Q. How much? A. \$15.00.

Q. What kind of advertising was that? [57]

A. What kind of advertising?

Q. Yes.

A. I don't exactly remember but I believe it was—I really don't know but probably invitations. I mean it was printed advertising; probably invitations or cards, I don't know.

Q. Directing your attention to February 22nd to 28th—

Mr. Vosburg: What year?

Mr. Hamilton: 1943.

A. 22nd and 28th?

Q. Yes, 1943. A. All right.

Q. Will you read Item No. 8, please?

A. "Advertising and Paper."

Q. How much? A. \$2.50.

Q. The week of March 15th to 22nd, 1943, Item No. 10. A. "Advertising."

Q. The week of July 12th to 17th, 1943.

A. July 12th?

Q. Yes. A. Yes.

Q. Item No. 9.

A. "Advertising, \$15.00." May I explain that?
The Court: Yes.

A. Probably the Firemen's Benefit Association or one of the [58] various organizations, the Railroad Brotherhood, or some sort of thing of that nature, which we have frequently; I mean, almost every month they want you to donate for this or donate for that. We had a lot of that where we donated an "ad." I could show you—

(Testimony of Irene Lambeth.)

Mr. Hamilton: Q. You donated an "ad"?

A. That is right.

Q. What do you mean by that?

A. Well, for instance, the Railroad Brotherhood Association was putting on a campaign to raise some money, they will come out with a paper or a magazine or pamphlet of some kind and solicit the various clubs and businesses to give them an ad, which is practically a donation. It certainly does no one any good.

Q. You would put the name of your club in their paper, whatever it is?

A. Yes, and I have copies of lots of those that says "Club Members Only." That is only one example. There are numerous of those agencies that have done that.

Q. Directing your attention to the week of August 13th to 20th, 1944,—

A. August 13th to 20th?

Q. 1944. A. All right.

Q. —please read Item No. 3.

A. "Highway sign." That is a company, however.

Q. What? [59]

A. The Hi-Way Sign Company.

Q. How much money? A. \$169.00.

Q. That was for a Neon sign outside the club-rooms? A. Yes, right.

Q. The Bailiff has handed you Defendant's Exhibit No. 9 for Identification. I will ask you if you recognize that book? A. Yes.

(Testimony of Irene Lambeth.)

Q. Will you please tell us what it is?

A. It is the bookkeeping book for 1944.

Q. Part of 1944?

A. Part of 1944, apparently, and 1945.

Q. For the La Fiesta Club? A. Yes.

Mr. Hamilton: I offer that in evidence.

Mr. Vosburg: No objection.

The Court: Admitted.

(Account Book, La Fiesta Club, thereupon received in evidence and marked Defendant's Exhibit No. 9.)

The Court: It is about 12:00. I would like very much, without rushing anybody, to get through with this case today. We will resume at 1:30 to make sure.

(Thereupon a recess was taken until 1:30 o'clock p.m.) [60]

Court reconvened at 1:30 o'clock p.m.

IRENE LAMBETH.

plaintiff, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued)

By Mr. Hamilton:

Q. Mrs. Lambeth, you have before you Defendant's Exhibit No. 9, which is the book of the La Fiesta Club for part of the year 1944. I will ask you to turn to the month of October, 1944. I believe it is the first one in there. A. Yes.

(Testimony of Irene Lambeth.)

Q. Do you find any items listed there under the description of "Advertising"?

A. Advertising and supply, yes.

Mr. Vosburg: How much, please?

Mr. Hamilton: Q. There are four items, aren't there? Four items totaling \$55.00?

A. Not on this page that I can see.

Mr. Hamilton: May I approach the witness, your Honor?

The Court: Yes.

Mr. Vosburg: Talk just a little bit louder, Mrs. Lambeth. A. It is not my bookkeeping.

Mr. Hamilton: Q. Do you find listed there four items in the amount of \$55.00?

A. Yes, one for the Woodmen of the World, one for "Sportsmen."— [61] Those were donations I was mentioning a while ago. Yes, \$55.00 total.

Q. For the month of November, 1944—

A. Yes.

Q. —under the same heading, "Advertising," do you find anything listed there and, if so, give me the total? A. \$154.30.

Q. And for December, 1944?

A. Yes, \$55.45. However, these are all listed separately. It is not all advertising.

Q. There are six items there? A. Yes.

Q. In January, 1945?

A. Yes, There are three.

Q. Totaling \$63.07? A. It is not totaled.

Q. Then, in February, 1945, was the club closed?

A. It was closed in the latter part of January and the first part of February.

(Testimony of Irene Lambeth.)

Q. Then I will skip that. (Exhibit No. 8 handed to the witness.)

If you will turn to the week of September 26th to 30th, 1943— A. Yes.

Q. —you have a page opposite “Disbursements,” which I believe is a page which would cover receipts. Down at the bottom, Item [62] No. 4, will you read that to the Court. A. Cover charge.

Q. How much? A. \$205.00.

Q. Turn to the week October 24th to 31st, 1943.

A. October what?

Q. October 24th to 31st.

The Court: What was that, \$205.00?

Mr. Hamilton: Cover charges, yes.

Q. Now, in the same place, opposite the “Disbursements” page, would you read Item No. 2?

A. “Cover charge, \$220.00.”

Q. Now, turn to the week November 21st to 30th, 1943. A. November when?

Q. 21st to 30th? A. Yes.

Q. Read Item No. 4.

A. “Cover charge, \$245.00.”

Q. Turn to the week December 19th to 31st, 1943— A. All right.

Q. —and read Item No. 1.

A. “Cover charge, \$243.00.”

Q. And No. 2? A. “\$135.00, Christmas.”

Q. And No. 3? [63]

A. “New Year’s Eve, \$213.80.”

Q. That is all for that purpose at this time. I realize you cannot give an exact answer to this

(Testimony of Irene Lambeth.)

question but approximately how many meetings of the board of directors were held between October 31, 1943, when you became secretary, and September 18, 1944?

A. Are you talking about our weekly meetings?

Q. No, I am talking about meetings of the board of directors of the Cozy Club?

A. Well, I don't know. We had them whenever it was convenient.

Q. Do you have any idea how many you had?

A. Well, I would say once or twice a week.

Q. Of the board of directors? A. Yes.

Q. You, as secretary, kept the minutes of those meetings? A. No, I didn't. I had—

Q. You kept some minutes, didn't you, minutes of some meetings? A. Yes, I did.

Q. All the records you did keep are in that minute book which is in evidence as Plaintiff's Exhibit No. 1?

A. You mean the record we kept of them?

Q. Yes.

A. They are in the book, yes. We did not have an official meeting every time the board of directors got together. Those were all meetings that were held in the attorney's office and our [64] other meetings were held always in the club itself.

Q. Those were always held in the attorney's office?

A. All of those were held in the attorney's office, yes, or else on the premises. I think the minutes will tell you where they were held, but usually in

(Testimony of Irene Lambeth.)

the office. Our meetings when we decided on members and all that sort of thing were held—were in our office at the club.

Q. Those were the only kind of meetings held in the club office. Is it your testimony that any meeting, other than a meeting to elect members, was held in the office of your attorney? Is that right?

A. Most of those meetings—As I say, it will tell you on the minutes, but, as I remember, most of them were held in the attorney's office. However, I think on one or two occasions that they were held in the clubrooms.

Q. You testified some time ago that your name and the names of the officers would not be in the roster of the club membership?

A. Would not be shown as a member.

Q. If a person were a member and did not have a locker number, do you have any record of his being a member?

A. Would not be any members except that did not have locker numbers or identification numbers—Maybe that would make it clearer to you. Identification numbers other than the three officers—

Q. What do you mean, "identification numbers"? [65]

A. It is the same thing as what I am talking about, a locker number.

Q. The same as a locker number?

A. Yes. It is a means of identifying your bottle, if it was on a bottle, or a means of identifying

(Testimony of Irene Lambeth.)

a parcel that they had checked if there happened to be a parcel checked in the checkroom.

Q. But if a person were a member but also did not have a locker, then the club had no record of his membership, is that right?

A. Well, I imagine there would be plenty of evidence that they were members.

Q. The club had no record, then; how could you tell if a person was a member?

A. There was only three of us, and we could remember that—president, vice-president and secretary-treasurer. Actually, I don't know if their names are in the book but I doubt it because of the fact—

Q. But every other member had a locker number? A. Yes.

Q. During the period covered by this lawsuit, at the time of the war, could you give us any estimation as to the number of soldiers and sailors who enjoyed the facilities of the club? Were they numerous? Did you have many of them?

A. Yes, we had quite a few.

Q. Quite a few sailors and soldiers? [66]

A. Yes, they are marked "Military" members in the membership book.

Q. You testified that the club adopted a different policy as to those people. In other words, they reduced the membership dues to 50 cents.

The Court: What do you mean by "dues"?

Mr. Hamilton: That is my error. Reduced the membership fee to 50 cents.

(Testimony of Irene Lambeth.)

The Court: Were there monthly dues?

A. Yearly.

Mr. Hamilton: Q. Yearly? A. Yes.

Q. In the amount of \$3.00 for civilians and 50 cents for military personnel, or anyone in uniform. You testified that the reason you reduced the membership fee to military personnel was that they were in town only a week or two, is that correct?

A. Some of them were in town only a few weeks; others were in town longer.

Q. Yes. Some would be in town maybe only a few days? A. That is right.

Q. How did the club handle their memberships?

A. In what respect?

Q. Well, how were they to become members? Suppose a sailor was in town for a week, how would he become a member?

A. Well, more of them than not were introduced either by the [67] military police here in town that used to give them a card and send them to our place because they felt they would be well taken care of and not robbed—

Q. Give them what kind of a card?

A. A guest card. The military police did that for us.

Q. The military police would distribute guest cards of the Cozy Club?

A. They gave out some guest cards, yes.

Q. What happened then?

A. What do you mean, what happened then?

Q. How did one become a member? By having a guest card?

(Testimony of Irene Lambeth.)

A. No, he didn't. They were introduced that way to us.

Q. And then what happened?

A. Then they made application for membership just like anyone else would.

Q. These soldiers would be coming in all the time, every day, during the whole period of this lawsuit, the period covered by this lawsuit?

A. Well, I imagine there were sailors and soldiers probably around the place every day during that period, yes. All the young men were in the service at that time.

Q. Even though the soldiers and sailors would only be in town for a few days or maybe a few weeks, did the board of directors investigate the men's character and—

A. We could investigate them only to the extent of their conduct [68] and the fact that they were in uniform was a very good recommendation.

Q. How many times during this period would you estimate the board of directors met and passed on applications of a soldier or a sailor?

A. Practically every morning in the world we did that.

Q. The board of directors was meeting every morning and passing on applications of soldiers?

A. Mrs. Sherman and I were there every morning, yes, and we had numerous applications, as you can tell by the number of them.

Q. If a sailor came into town and he was not known by anybody, not a single member of the

(Testimony of Irene Lambeth.)

club, by nobody in this town, a member of the military police would give him a guest card?

A. No. You misunderstood me. I said on occasions the military police had recommended our place to them and given them a guest card whereby we met them at the door.

Q. Your testimony was the military police would distribute guest cards.

A. Some of the military police would give guest cards to some of their buddies, yes.

Q. A soldier getting one of these, then, if he was not known by any member of the club, would take that guest card up and stay there for an hour or so perhaps and be eligible for membership?

A. When he brought a guest card to the door, if he wanted to become a member, he would still have to make application for [69] membership like any other member did.

Q. All he would have to do to become a member would be to take that guest card that had been given to him by a member of the military police to the door and make application for membership and the next morning the board of directors would meet?

A. If his conduct under his guest card was all right, we would accept him, if he minded his own business, as long as he was a nice fellow—I mean, apparently,—and conducted himself in a nice manner; the fact that he had a uniform, as I stressed before, was a recommendation.

Q. Was it necessary that a soldier or sailor be

(Testimony of Irene Lambeth.)

vouched for by a regular member? A. Yes.

Q. Who would do that?

A. He would be vouched for before he was ever given a card; I mean, whoever give him the card would vouch for him by giving the card.

Q. You testified a member of the military police would give him a card.

A. These boys were all members of the club. I can show you probably twenty.

Q. Was it the practice of the military police to hand out cards?

A. No, I didn't say that. Don't misconstrue it. I said some of them—That was their policy. They also gave cards to the Aero Club and some of the other clubs, too. [70]

Q. The Aero Club?

A. Yes. Officers were allowed there. That was for officers only.

Q. On January 3, 1944, at a special meeting of the board of directors, it was decided it would be necessary to obtain new quarters for the club, or to expand their facilities, isn't that correct? A special meeting of the directors—

A. At what time, please?

Q. January 3, 1944?

A. I can't say. I don't remember.

Q. It is in the minute book.

A. Well, it is there, then.

Q. It is in Plaintiff's Exhibit No. 1, and it was decided "On motion duly made, seconded and unanimously carried, the dues of the club members for

(Testimony of Irene Lambeth.)

the first six months of 1944 were fixed at \$3.00 per person and the secretary-treasurer was instructed to collect said dues, same to be held in a special fund."

You were the secretary-treasurer. Can you tell the Court the amount of dues you collected?

A. I don't have—I don't know exactly the amount of dues, no.

Q. How many members of the club were there at that time, approximately?

A. I can't tell you. If I can see the books, I can tell you. I mean, my memory does not serve me back that far. [71]

Q. You do not recall at all how much money you collected in that special fund?

A. No, I don't because—I mean, it was used for a purpose and I don't remember at any one time how much we did have. However, there is a record of it there. You have a record of it somewhere there.

Q. In any of the exhibits here?

A. In the books there is a record of it.

Q. In what club books?

A. In the Cozy Club Books.

Q. Any one that is here in evidence?

A. No, I don't see it. There was a record of all of it kept in one of the books that the Government had, that they examined.

Q. It is not here in this courtroom?

A. I don't see it here, no, now.

Mr. Hamilton: I believe that is all.

(Testimony of Irene Lambeth.)

Redirect Examination

By Mr. Vosburg:

Q. As I understand it, if you had the account book of the Cozy Club, the one that contained the deposits for initiation fees, you could tell exactly how much money you had collected in any one year?

A. Yes, but I think it could be figured out from these books.

Q. You could figure it?

A. I think I could. [72]

Q. It is just a question of accounting?

A. Yes.

Q. If you had these books, you could just point to the item?

A. Yes. The disbursement of the money and everything was there.

Q. Counsel had you read several items in the book, the cover charge so much for each week or month?

A. Yes.

Q. Just exactly what was that? What does that charge cover?

A. The cover charge was for more than two guests. I mean, we got to the point where there were so many members bringing more than two guests—would bring three or four or five guests—and we charged the guests a cover charge, the extra guests.

Q. But no member of the club paid a cover charge?

(Testimony of Irene Lambeth.)

A. No, unless they would be paying for their friends that they were bringing in.

Q. If they brought guests, they paid a cover charge on the guests only?

A. They were allowed two guests and other than that they had to pay a cover charge.

Q. On any over two guests? A. Yes.

Q. Wasn't that only on certain specified days?

A. Friday and Saturday night, busy nights.

Q. The cover charge items would be the amounts collected on guests brought by members, over two in number? [73] A. Yes.

Q. In regard to this advertising, you have, at counsel's interrogation, pointed out specific sums here and there spent for advertising. Just what was the nature of that advertising?

A. Well, the advertising for one thing, a reminder to the members. We advertised any special party or any special event that we were having.

Q. Was there anything in your advertisements that would indicate to whom you were addressing your communication? A. Yes, the ad.

Q. What was that?

A. "Members and guests only" on almost every ad.

Q. That is, all of your advertisements?

A. Yes.

Q. In all of your advertisements you would say, "Members and guests only" or words to that effect?

(Testimony of Irene Lambeth.)

A. "Members and guests invited" usually is the way it was worded.

Q. I take it you would use a certain advertising medium to advise your members of special social events?

A. Many times advertising was by ticket. We would send out tickets to them for special occasions. Many times we typed out letters to them—all different kinds of advertising, as far as that goes. All of that advertising listed there would include all of our stationery, would include all of our membership cards and anything that we had to use in that way. [74]

Q. All advertising, not only—

A. That is the heading on the column. It does not necessarily mean it is all advertising as pointed out here in the book; I mean, as designated through the book.

Q. In other words, it would cover stationery and things of that nature, and supplies?

A. Anything that would have our name on it.

Q. Prior to September 17, 1943—Counsel has had you go through the ledger account and pick out certain items which were either for wax or dance wax. Take "Dance Wax" for a minute. What would it be used for?

A. Yes. I will tell you. We used what we call dance wax. It comes in large containers—I think it is ten gallons that we buy—That is the way we bought it towards the last, anyway. It is used for asphalt tile, to polish asphalt tile. Our janitor used it always.

(Testimony of Irene Lambeth.)

Q. Where did you have the asphalt tile?

A. All around the bar.

Q. In which place?

A. Both places, as a matter of fact. At 1017 Southwest Sixth.

Q. Did you have any dancing at 1017 Southwest Sixth?

A. Never. There was no dance floor there, even, no space for dancing.

Q. As far as any wax there, it is just out of the question?

A. It was used with a waxing machine for the asphalt tile. [75]

Q. Up at the Southwest Yamhill location, until you got your restaurant permit, there likewise was no dancing?

A. No, we didn't have dancing. If we had dancing, the Liquor Commission would probably have given us another ticket. They checked very close on those things.

Q. During the period from May 1, 1943, to September 17, 1944, when you got your restaurant permit, and while there was no dancing, as you have testified, was there any other kind or form of entertainment?

A. Not unless you call a music box entertainment.

Q. Such as anything you might call a performance of any kind?

A. The only time that there would have been would be if there was a special occasion, a party of some kind.

(Testimony of Irene Lambeth.)

Q. I am talking about the period from April 1st—May 1st, 1943, to September 17th, 1943.

A. We did not have any entertainment, no, sir, at any time, Mr. Vosburg.

Q. In other words, you have testified positively that there was nothing which would include performances of any kind, such as singing, violin solos or anything of that nature?

A. Well, as a matter of fact, in afternoons we had a girl playing the solovox; for awhile we had a girl that played the solovox in the afternoon between 3:30 and 5:30, I believe.

Q. That would be orchestral music?

A. Yes, solovox. That is the only entertainment that we ever [76] had at the La Fiesta.

Mr. Vosburg: That is all.

Recross Examination

By Mr. Hamilton:

Q. You say you used dance wax to polish the tile around what?

A. The asphalt tile that is on the floor, in squares, laid in squares. It is also around bars where there are—The carpets were not clear up to the bar. There was a space of about, oh, I think six or seven feet around where people smoke cigarettes and that sort of thing, and that is polished—That is a polish which the janitors use.

Q. You had that tile at 1017 Southwest Sixth?

A. No, I think—I don't think it was tile there but it was something like it. It was linoleum, in-

(Testimony of Irene Lambeth.)

laid linoleum, I believe, as I remember, but we used it there, too.

Q. You have been handed Plaintiff's Exhibit No. 8, which is the ledger or a record of disbursements for the La Fiesta Club for 1943.

A. Yes.

Q. Attached to the page for May 22nd to May 31st, 1943, do you see a slip which is attached there?

A. Yes.

Q. What is that slip labeled at the top?

A. "Moving expense."

Q. And you see a notation down below, "Tile, \$23.00." [77]

A. Yes. Wait a minute. Yes.

Q. You did have tile then at 1017 Southwest Sixth, isn't that correct?

A. This tile—As a matter of fact, the tile that you are talking about is Spanish-type tile. We had it all around the side of the building, for the effect of roofing. You know, tile, little round things.

Q. Not exactly.

A. Well, it is regular roofing tile, is what it was, round type. We had a Spanish-type tile around the side.

Q. How did you polish that?

A. We didn't polish that. I am talking about the asphalt tile that is on the floor that we polished, polished the tile.

Q. You said you advertised as a reminder to your members. Weren't the members of your club bound together socially and interested in the ac-

(Testimony of Irene Lambeth.)

tivities of the club? Did you find it necessary to—

A. Most advertising that we did, as I explained before, was donations such as the Policemen's Benefit Ball and their magazine and that sort of thing.

Q. You just now testified that whenever you had any kind of a party or anything, you reminded the members?

A. That is right. We did that.

Q. Therefore, it took a lot of stationery?

A. That is customary in all clubs. [78]

Q. They were not a very closely knitted unit, then, were they?

A. Well, I would say yes, but it is customary in all clubs to do that.

Mr. Hamilton: That is all.

Mr. Vosburg: That is all. Thank you, Mrs. Lambeth.

(Witness excused.) [79]

C. B. MARX,

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vosburg:

Q. What are your initials, Mr. Marx?

A. C. B.

Q. Where do you live?

A. 480 Fifth Street, Oswego.

(Testimony of C. B. Marx.)

Q. How long have you lived at that place?

A. A little over two years.

Q. How long have you lived in Multnomah County?

A. About, right around twenty-nine or thirty—Pardon me. That is in Clackamas County, Oswego.

Q. Clackamas County?

A. Yes, but I lived here in Portland considerable of that time.

Q. What business are you now engaged in?

A. I am an officer of the Concrete Products Company of this city.

Q. Were you a member of the Cozy Club?

A. Yes, I was.

Q. Do you know about when you became a member?

A. I was a member before Mrs. Lambeth took over.

Q. Were you a member during 1943 and 1944 when Mrs. Lambeth was acting as manager? [80]

A. I must have been because I always have been a member ever since it was—

Q. Mr. Marx, during the time of the operation of the club on Southwest Yamhill, was it open to anybody or was it open only to members?

A. Only to members.

Q. Do you know that of your own personal knowledge? A. Yes.

Q. Have you ever seen an occasion, Mr. Marx, when people were refused admittance who were

(Testimony of C. B. Marx.)

not club members? A. Yes, I have.

Q. Have you ever seen an occasion when people who were not club members got in, where they were not guests of some club member?

A. No.

Q. Do you remember your number?

A. No, I don't.

Mr. Vosburg: May I see Exhibit No. 3, please?

Q. I was just interested. You are C. B. Marx?

A. C. B.

Q. According to this record, you are No. 32. You are one of the old, old members. How often did you patronize the Cozy Club or the La Fiesta Club when it was on Yamhill?

A. I would say in some cases maybe once a week; some cases, oftener; and then there would be periods when maybe for as long [81] as twenty, thirty or forty-five days that I didn't. I was what was known as a regular customer, I guess.

Mr. Vosburg: You may cross-examine.

Cross Examination

By Mr. Hamilton:

Q. Do you play golf? A. No, sir.

Q. Do you bowl? A. No, sir.

Mr. Hamilton: That is all.

Mr. Vosburg: That is all.

(Witness excused.) [82]

R. H. LAMBETH,

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vosburg:

Q. Mr. Lambeth, there has been a lot of discussion about your name. We only seem to know that it starts with a "R". What is the second initial?

A. Ray.

Q. Ray what? A. Ray H.

Q. You are not the Mr. Lambeth that was married to the plaintiff in this case? A. No.

Q. Where do you live, Mr. Lambeth?

A. My work is in Richland, Washington.

Q. Up at Richland? A. Yes.

Q. That is on the atomic bomb project?

A. Yes.

Q. You still maintain your home in Portland?

A. Yes, I do.

Q. Your wife lives here still? A. Yes.

Q. How long have you been a resident of Portland? [83]

A. Since about '42, the latter part of '42.

Q. You came here from Montana?

A. No, I came from Central Washington here.

Q. Montana to Washington to Oregon?

A. Yes, Washington to Oregon.

Q. Do you remember about when you first became acquainted with the Cozy Club?

(Testimony of R. H. Lambeth.)

A. Oh, I would say it was probably the early part of '43 or the latter part of '42.

Q. What are your brother's initials?

A. A. A.

Q. Did he have any position with the Cozy Club?

A. He was president — He was assisting the Cozy Club at times, trying to help it as much as possible. I believe at that time he was president of the club.

Q. Did you patronize the club?

A. Only as a guest of my brother's when I first came in.

Q. Your brother finally went away to the service? A. Yes.

Q. From then on what would you say as to the patronage you gave to the club?

A. Oh, I was in there, I would say, about once or twice a week. Is that the question you had in mind?

Q. I believe in June, 1944, your brother and Dr. Stevens—You knew Dr. Stevens, did you not?

A. Yes.

Q. Did you know him in Montana?

A. No, I got acquainted with him afterwards; down at the club, as a matter of fact.

Q. After Dr. Stevens and your brother had left for the war, I believe you became president of the club in June, 1944? A. Yes.

Q. Do you know, beginning in the forepart of 1944 and during your presidency, what policy was

(Testimony of R. H. Lambeth.)

adopted by the Cozy Club or the La Fiesta Club towards men that were in the service?

A. I believe the group down there felt many of the officers of the Army and Navy already have other places, like the Aero Club, that they have gone to, and did go to, but the enlisted men had very little places that they could take their friends, their girl friends, to a place that they could drink and dance, if necessary, and we thought perhaps we would reduce the amount that they would have to pay, that is, the membership, the amount of membership that was required, and the dues, and allow them to come in under military membership.

Q. During the period that you were president, when I believe Mrs. Sherman was vice-president and Mrs. Lambeth was secretary-treasurer, do you know how applications for membership, both military and civilian, were processed, the machinery that was gone through?

A. Yes, I believe that I can answer that. Investigation of the [85] members that made application—They had to be vouched for by another member. I have had to do it on several occasions, and they usually asked me, before I became president, as to what the member was, what his habits were and whether or not I could recommend him, and of course I did when I put in the application.

Q. That was the general procedure?

A. That was the general procedure. Then, of course, we did get together on some occasions—I have sat in on some of the meetings—and dis-

(Testimony of R. H. Lambeth.)

cussed whether or not we should have that member in the organization and if his attitude on the floor had been good enough so that we thought we could continue to have him as a member—That is, as to military only.

Q. I believe you said you participated in some meetings where you discussed prospective applicants, but generally I think you said it was passed upon by the other two officers?

A. I didn't say that, but that is true. It was usually passed upon by the other officers. After all, I was busy in another job that required twelve or fourteen hours a day, sometimes, to take care of it, and I wasn't able to be around the club at all times.

Q. Incidentally, did you propose anyone for membership?

A. Well, right offhand—That has been a long time ago, but I believe Al Hunter was one I brought in. I believe that was one of the members. He was a military man for the Navy that was down [86] on board ship at Albina. I proposed him, if I recall correctly.

Q. When you moved from the Southwest Sixth location to the Yamhill location, was it the desire of the club to increase their membership?

A. Yes.

Q. Why?

A. In order to have additional facilities and offer more facilities to the members that we already had, that were already there, and, after all,

(Testimony of R. H. Lambeth.)

with the war coming on, and in progress, as it were, everything was going up, costs were going up, and it had to have more membership in order to stay in business.

Q. At the old location on Southwest Sixth, 1017 Southwest Sixth, did you have a restaurant?

A. No.

Q. How about dancing? A. No.

Q. I don't suppose you remember the date or have any idea about when dancing started at 929 Southwest Yamhill?

A. I would not know, no. I am sorry.

Q. Do you know whether or not, when you first moved up to the Yamhill Street location, there was or was not dancing?

A. At the first, no, there wasn't any dancing. We were not allowed any.

Q. You don't know exactly when dancing started?

A. No, I don't. I couldn't answer that. [87]

Q. Do you know whether or not the question of judging applications was done in a fair manner, so that those people that you thought were entitled to join got in and those who were not, did not?

A. Well, from the conduct of the club, I believe it was done in a fair manner.

Q. Was it such a thing that anybody that made application got in, or was there selectivity of the people that got in?

A. There was selectivity of the people.

Mr. Vosburg: That is all.

(Testimony of R. H. Lambeth.)

Cross Examination

By Mr. Hamilton:

Q. You were president of the club?

A. Yes, I was president of the club from, I believe, about June, 1944, up until the time it dissolved in 1945.

Q. June, 1944?

A. In June, 1944. I believe that is correct.

Q. Therefore, you were a member of the board of directors? A. Yes.

Q. As such, it was one of your functions to pass on membership, is that right?

A. Whenever I was there and it was possible to do so, yes. However, as I explained here a moment ago, my work primarily was at Albina Engine & Machine Works during the war, and when you are working twelve and fourteen hours a day, which we did [88] during that time, I wasn't able to go up to the club often and I left that responsibility up to Mrs. Lambeth and Mrs. Sherman, more or less delegated them or saddled them with that responsibility.

Q. You testified here just now that you thought the members were selected on a fair basis and that there was selectivity, but you don't actually know, do you?

A. From the people I met in the club—and I feel I am a fair judge of people that I run across, and I can tell whether or not they are decent people, at that—I found every one of them to be very

(Testimony of R. H. Lambeth.)

courteous and at no time did they bother me in any way or give me any trouble, as far as that is concerned.

Q. That does not answer the question whether you know the selection was fair or not.

A. The only ones I know anything about are those that I sat in on.

Q. How many did you sit in on?

A. Offhand I couldn't answer that, because I don't know.

Q. I am not asking for the exact number, but about how many?

A. I would say I probably sat in on seven or eight, perhaps nine, maybe more.

Q. How many members of the club would you say were elected at each one of these meetings?

A. I wouldn't know, but I would say probably it would be an average of probably three or four, maybe five, maybe less, [89] depending on the day that I was up there.

Q. You testified you vouched for a number of members from the armed services? A. Yes.

Q. Who were those people? Your friends?

A. Well, they were friends that I had worked with. In the beginning of the war I was with the Navy section down at Albina, and there were a lot of fellows I knew down there from my work with them during the course of the day and I felt they were my friends, yes.

Q. Did you ever vouch for any soldier or sailor

(Testimony of R. H. Lambeth.)

that was just down for a day or so, whom you didn't see before? A. No.

Q. You did not? A. No.

Mr. Hamilton: I believe that is all.

Redirect Examination

By Mr. Vosburg:

Q. Where is your brother now, A. A. Lambeth?

A. My brother is in Seattle at the present time.

Mr. Vosburg: Thank you. May we excuse Mr. Lambeth?

Mr. Hamilton: Yes.

(Witness excused.) [90]

Mr. Vosburg: May it please the Court, the defendant has subpoenaed a former employee. I see her sitting back there, but I would just as soon call her as my own witness. May I call Miss Shanahan?

LANICE SHANAHAN,

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vosburg:

Q. Miss Shanahan, will you please give your full name to the Reporter?

A. Lanice Shanahan.

Q. Where do you live?

A. Carroll Hotel, Portland, Oregon.

(Testimony of Lanice Shanahan.)

Q. How long have you lived in Portland?

A. Six years.

Q. Do you know Mrs. Irene Lambeth?

A. Yes.

Q. Did you ever work for her?

A. Six years.

Q. For how many years? A. Six.

Q. Where did you work for her?

A. In 1017, the Cozy Club. [91]

Q. Then, after that?

A. The La Fiesta Club.

Q. Where do you work now?

A. Stark Club.

Q. Were you working for Mrs. Lambeth during the period, say, 1943 and 1944, when she was over at the Cozy Club or the La Fiesta, whichever you wish to call it, the one over at 929 Southwest Yamhill? A. Yes.

Q. What was your position there?

A. Waitress.

Q. What? A. Hat girl and waitress.

Q. Do you know whether or not during the period of time that you were there—I take it you were there during the entire time of 1943 and 1944? A. Yes, sir.

Q. During the period of time you were there, will you state whether or not the La Fiesta or Cozy Club was operated as a private or a public club? A. Private.

Q. How do you know that?

A. People that were not members were not

(Testimony of Lanice Shanahan.)

allowed in; had to be a member to be allowed in.

Q. Did you have occasion to be the attendant in charge of [92] admissions some time during December of 1944 when you had trouble about a liquor investigator getting in? A. Yes.

Q. How did you happen to be on the door at that time?

A. It was early in the evening; the checkroom girl had not arrived.

Q. And you were acting as relief?

A. Yes.

Q. You were not acquainted with the law enforcement officers, were you?

A. No, I was not, not all of them.

Q. This gentleman presented himself and asked for admission? A. Yes.

Q. Did you let him in? A. No.

Q. Why not?

A. Because he wasn't a member.

Q. How did you know?

A. He didn't have a card.

Q. And you rejected him? A. Yes.

Q. While you have been in charge of the door, from your own observations or otherwise, do you know whether non-members were admitted unless they came as guests of members?

A. Unless they were guests of a member and with them, with the [93] member, they were not admitted.

Mr. Vosburg: You may cross-examine.

(Testimony of Lanice Shanahan.)

Cross Examination

By Mr. Hamilton:

Q. The testimony in this case has been that the La Fiesta Club moved from 1017 Southwest Sixth to 929 Southwest Yamhill along about the middle of May, 1943. You were there at the time, weren't you? A. Yes.

Q. You moved with them from 1017 Southwest Sixth to 929 Southwest Yamhill? A. Yes.

Q. After the club moved to 929 Southwest Yamhill, at what period, at what time, did they start to dance? A. They started to dance—

Q. They started to dance immediately, didn't they?

A. No, not immediately. I don't remember just exactly how long it was—a little while after we had opened they started to dance.

Q. How long after?

A. Quite some time. I can't say exactly.

Q. Are you sure they did not start immediately? A. Not until the kitchen opened.

Q. When did the kitchen open?

A. I don't remember that. It has been quite a while ago. I [94] would say a month or so after we first opened.

Q. A month or so afterwards? A. Yes.

Q. That is when they started dancing?

A. As far as I know. I couldn't give you the exact date.

(Testimony of Lanice Shanahan.)

Q. You were employed there at the time. That was before September 17, 1943, wasn't it?

A. I can't remember that.

Q. You cannot?

A. No. I don't know whether it was before September 17th or after.

Q. Miss Shanahan, on Wednesday evening, March 31st, did you have a conversation with Mr. Pattison and Mr. Castle of the Bureau of Internal Revenue?

A. Yes, sir, what I had time for.

Q. I will ask you whether or not at that time -- That was at the Stark Club where you now work?

A. Yes. I was very busy.

Q. I will ask you whether or not at that time and place you told Mr. Pattison and Mr. Castle that immediately upon moving from 1017 Southwest Sixth Street to 929 Southwest Yamhill they began to dance in the Club La Fiesta or words, or words to that effect?

A. No, I don't think I said exactly that. I was busy with other people and a little confused, and I don't remember what [95] I said that night.

Q. You had a conversation with me last Saturday at approximately 5:00 or 6:00 o'clock, is that correct?

A. Yes, sir.

Q. That was in the lobby or just outside the lobby of the Carroll Hotel, where you live on Southwest Yamhill, is that correct?

A. Yes.

Q. I will ask you whether or not at that time and place, upon my questioning you as to when

(Testimony of Lanice Shanahan.)

dancing commenced at the Club La Fiesta at 929 Southwest Yamhill Street, whether or not you did not tell me that they started dancing at that club immediately upon moving in, or words to that effect?

A. They still did a lot of building in the place after we opened and could not have started dancing as soon as we moved in.

Q. I do not mean the first day, but I will ask you whether or not you did not tell me last Saturday that they always danced after they moved to 929 Southwest Yamhill?

A. I meant that after the club was finished—The kitchen was not finished, the floor was not finished—We had tables on the dance floor until some time after we got it all straightened out, and then we started dancing. That was when the kitchen was finished.

Q. You said you talked to Mr. Castle and Mr. Pattison and you [96] said that you were busy then and there were a lot of people around. You were not busy when you talked to me, were you?

A. No, I was not.

Q. There was nobody around to bother you?

A. When I said immediately after we opened, I meant when the place was remodeled. We did a lot of work. We were still open for business but we did a lot of work there.

Q. Dancing started before September 17th, did it not?

A. I couldn't tell you. I couldn't tell you the exact date.

(Testimony of Lanice Shanahan.)

Q. On March 31st, when you had this conversation with Mr. Pattison and Mr. Castle, at the Stark Club, I will ask you whether or not, at that time and place, in answer to their questions as to whether or not this was a public or a private club, you said that after they moved to 929 Southwest Yamhill they tried to keep it a private club for about three weeks, but it did not work out, and then they just opened it up, or words to that effect? Did you make that statement to them at that time?

A. Not exactly that way.

Q. What statement did you make to them?

A. When Mr. Pattison came to the Stark Club, I was busy and had work—I didn't know who they were. I was confused on it. I had very little conversation with him.

Q. I am asking you about a particular statement. Did you make that statement?

A. I don't remember. [97]

Q. You don't remember? A. No.

Mr. Hamilton: I believe that is all.

Redirect Examination

By Mr. Vosburg:

Q. Where did you have this conversation with Mr. Castle and Mr. Pattison?

A. When I was on duty at the Stark Club.

Q. How many of them were there?

A. Two.

Mr. Hamilton: How many of what?

(Testimony of Lanice Shanahan.)

Mr. Vosburg: Q. Just Castle and Pattison?

A. Yes.

Q. Those are the two gentlemen here, sitting in the back of the courtroom? A. Yes.

Mr. Vosburg: That is all.

Mr. Hamilton: That is all.

(Witness excused.) [98]

MARGARET SHERMAN,

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vosburg:

Q. Will you state your full name, please?

A. Margaret Sherman.

Q. Where do you live?

A. 7322 Southwest Canyon Drive.

Q. How long have you lived in Oregon?

A. About forty-eight years.

Q. All your life? A. Practically.

Q. How long have you lived in Portland?

A. That long.

Q. Portland all the time?

A. Yes, sir. Well, in and out; I lived all over Oregon.

Q. Did you have occasion to be associated with the Cozy Club or the La Fiesta Club when it was at 929 Southwest Yamhill?

A. Yes, both places.

(Testimony of Margaret Sherman.)

Q. Also at 1017 Southwest Sixth?

A. 1017, yes.

Q. Were you an officer at any time when they were up on Yamhill Street?

A. That is when I became an officer. [99]

Q. What can you say as to the practice or the method of operation of the club, specifically from May 1st, 1943, to September 1st, 1944, as to whether or not it was open to the public, or whether it was operated as a private club and open solely to members and members when accompanied by guests — guests when accompanied by members, rather.

A. We were strictly a membership club, open only to members and their guests.

Q. Are you familiar with the incident that Miss Shanahan testified to that occurred in December, I believe, some time in 1944, when you were visited by the Oregon Liquor Control Commission representative, or one of the members of that force?

A. I knew about it but I wasn't there.

Q. You were not there? A. No, sir.

Q. As a result of that visit, I take it that your license was suspended?

A. That is right, I think the very next day.

Q. When you moved from 1017 Southwest Sixth to 929 Southwest Yamhill, did you immediately begin dancing? A. No, sir, we did not.

Q. Do you know approximately, or do you know how long it was before you started to dance there?

(Testimony of Margaret Sherman.)

A. I don't exactly know the date, but it was several months.

Q. Are you familiar with the policy that the club adopted [100] towards servicemen in the spring of 1944?

A. Yes. I certainly am.

Q. In June, 1944, you were elected vice-president, were you not?

A. Yes.

Q. After you were elected vice-president, do you know what method was used in determining whether or not a person should become a member after he had made application?

A. Yes, sir, I do.

Q. Just tell the Court what the machinery was?

A. Members would come in and we would take their application for others who wished to be a member, and then we would decide, and if they were eligible to become members we took them in.

Q. Did everybody who made an application become a member?

A. No, sir.

Q. Did you use a degree of selectivity in ascertaining who should or should not be members?

A. We did.

Q. Other than law enforcement agents, up to 1945, do you know whether or not any person came—Do you know of any person coming to the club who was a non-member and who did not come as a guest?

A. I certainly do not.

Q. How did you operate the door so as to let members and non-members in? [101]

A. We had an electric buzzer on the door. If they were members, why, we buzzed the door and they entered that way.

(Testimony of Margaret Sherman.)

Q. I take it if you did not know them they had to produce a card? A. That is right.

Q. Do you know whether or not people coming to the door were refused admittance?

A. Yes, we refused lots of them.

Q. Under what circumstances?

A. They did not have a card to come in, were not members.

Mr. Vosburg: You may cross-examine.

Cross Examination

By Mr. Hamilton:

Q. Are you familiar with the by-laws of the Cozy Club? A. Yes.

Q. Have you ever read them?

A. Pardon?

Q. Have you ever read them?

A. Read them? Yes.

Q. Do you know that the by-laws state that it is particularly desirable "that the activities of the club and the members thereof be constituted in a respectable manner."? Do you know that?

A. Yes.

Q. And for that reason they wanted to be very careful about the members they selected? [102]

A. Yes.

Q. You know that? A. Yes.

Q. Yet, despite that so-called policy of the club, the club elected these so-called members, for instance, members of the armed services that nobody knew? A. Well—

(Testimony of Margaret Sherman.)

Q. Just upon showing up there one night and not getting into a fight or acting disrespectfully, is that correct? A. Yes.

Q. Do you think that constitutes selecting members?

A. We didn't have any trouble with them, their conduct was very good.

Q. You did not have any trouble with them for maybe an hour or so that night. That is right, isn't it? A. What?

Q. You did not have any trouble with them for maybe an hour or so one night, and that is all it took for a man to prove himself, isn't that true?

A. Well, possibly they came the next night; they could still be a guest.

Q. They might come back again or might not, but they could be elected on the basis of their performance of one night? A. Well, yes.

Mr. Hamilton: That is all. [103]

Redirect Examination

By Mr. Vosburg:

Q. In addition to their performance, they had to be vouched for. You investigated them through other members, did you not? A. Yes.

Mr. Vosburg: That is all.

Recross Examination

By Mr. Hamilton:

Q. You investigated them through what members?

A. The members that brought them in with

(Testimony of Margaret Sherman.)

them was the basis of the recommendation we had.

Q. Did you know the board of directors was supposed itself to investigate? Did you know that?

A. Well, I can't say that.

Mr. Vosburg: It is a trifle argumentative, may it please the Court.

Mr. Hamilton: I beg your pardon.

Q. Did you know that a paragraph in the by-laws of the Cozy Club said that the officers of the club shall investigate the desirability of such applicants for membership? Did you know that?

A. Yes.

Q. Did you ever do any investigating, beyond seeing a soldier or sailor in there for one night, drinking?

A. Lots of times we did.

Q. But you never investigated personally, did you? [104]

A. Yes, I did.

Q. You did?

A. Yes. That was one of my jobs.

Q. Did you investigate all applicants?

A. Yes, I did.

Q. How did you investigate them?

A. I was there seven days a week.

Q. What did you do to investigate them?

A. Well, we asked their friends and we—

Q. You asked what friends?

A. The guest—the member that brought them in, and then we watched how they conducted themselves after they arrived or came in the club.

Q. That was your investigation. Did you ever have a fight in this club?

A. A fight?

(Testimony of Margaret Sherman.)

Q. Yes.

A. I expect we did. What club didn't have a fight during the war?

Q. I am not questioning that.

A. That is right. I mean we did have, yes.

Mr. Hamilton: That is all.

Mr. Vosburg: That is all.

(Witness excused.) [105]

Mr. Vosburg: May it please the Court, in the original pre-trial order that your Honor signed, in Paragraph 5 is set forth a table showing the income, rate of tax and the amount of tax, and in the last column is a blank for the amount of interest. The reason for that omission is because the Government which made up this assessment was not able to give me the figures on interest.

Mr. Hamilton, I would like permission to insert in that order, as signed by his Honor, the figures that you gave me for interest, together with the total amount of the assessment, plus the amount of tax. I take it that you will stipulate that is the correct amount of interest and the correct amount of tax that was collected—not the correct amount, but the amount of the tax?

Mr. Hamilton: The Government will so stipulate.

Mr. Vosburg: I want it distinctly understood. The plaintiff rests.

(Plaintiff rests.) [106]

Defendant's Testimony

FREDERICK C. ALDRICH,

was thereupon produced as a witness on behalf of the Government and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hamilton:

Q. Will you please state your full name?

A. Frederick C. Aldrich.

Q. By whom are you employed?

A. Oregon Liquor Control Commission.

Q. In what capacity?

A. As license supervisor.

Q. Stationed in Portland? A. Pardon.

Q. You live here in Portland? A. Yes.

Q. In your capacity as license supervisor for the Oregon Liquor Control Commission, it is your function to keep records and so forth of these various clubs. Do you have those records in your possession?

A. I have records of all licensees.

Q. Do you have with you the file on the La Fiesta Club? A. I do.

Q. Do you know and can you tell the Court whether or not the La Fiesta Club was ever licensed by the Oregon Liquor Control [107] Commission to operate as a private club? I will reverse that. Did you issue the club a license?

A. As far as the records I have are concerned, they were never issued a license as a club; in

(Testimony of Frederick C. Aldrich.)

other words, they did not have a club license from the Oregon Liquor Control Commission.

Q. That covers the period from May 1, 1943, to September 18, 1944, is that correct?

A. Yes.

Q. Will you please tell the Court what kind of a license they did have?

A. They had a restaurant and service license.

Q. Mr. Aldrich, did the La Fiesta Club ever apply for a club license?

A. Yes, they did apply.

Q. On what date, do you have that information?

A. May I refer to the record?

Q. Yes.

A. They applied for a club license July, 1944. The application was refused by the Commission.

Q. Do you know why it was refused by the Commission?

Mr. Vosburg: Just a minute, your Honor. That I think is calling for hearsay, as to what the Commission did. Just a minute. Let me make my objection. That is calling for hearsay as to why a particular application was refused. Here we have a supervisor who has come in and is asked to tell what the Commission did and [108] why they did it. I object to that, your Honor.

The Court: Mr. Vosburg, I tried probably two hundred draft cases during the war and in every one of them the Clerk of the Board was the only member of the Board who was present in the courtroom, and he was asked why the Board had classi-

(Testimony of Frederick C. Aldrich.)

fied this man or that man in a particular way, and we just stumbled along the best we could and, while technically it might be objectionable, even in the presence of a jury it doesn't do any great harm, so I will let this witness answer.

A. The Commission refused the granting of a club license for the reason that the applicant did not meet all the requirements of the type of license for which it applied. That was the reason, the official reason the Commission gave.

Q. Is that broken down in any more detail?

A. In no more detail than that.

Mr. Hamilton: I believe that is all.

Cross Examination

By Mr. Vosburg:

Q. As I understand it, it is your testimony here that the Cozy Club had a service license and a restaurant license at 929 Southwest Yamhill Street, is that correct? A. That is right.

Q. And the applicant that had that license was the Cozy Club and Irene E. Lambeth, Manager, was it not? Or was it just the Cozy Club, Irene E. Lambeth, Manager? [109]

A. By Irene Lambeth, Manager.

Q. In other words, the license was in the name of the Cozy Club and it just recited on there "Irene E. Lambeth, Manager," isn't that correct?

A. That is right.

Q. I think your records will also show, will they not, that from the 20th of January, 1945, until

(Testimony of Frederick C. Aldrich.)

the 14th of February, 1945, this club was without any license?

A. May I have those dates again?

Q. I beg your pardon?

A. May I have those dates again?

Q. I think it was on or about the 20th or 21st day of January, 1945, to on or about the 14th day of February, 1945? A. That is right.

Q. Do I have my dates exactly right?

A. The license was canceled January 21, 1945, and reinstated February 14, 1945.

Q. February 14, 1945? A. Yes.

Q. Now, sir, is it not a fact that the reason why that license was canceled was because the Commission claimed that it, the Cozy Club, was being operated as a private club?

A. That is right.

Q. In other words, the only license that they had, the Cozy Club, to operate was a service license and a restaurant license? [110]

A. That is right.

Q. That type of license compelled them to accept anybody from the public that conducted themselves in a reasonable decorous manner?

A. That is right.

Q. And since the Cozy Club was only operated as a private club, they revoked the license because they were doing what the Liquor Commission

(Testimony of Frederick C. Aldrich.)

thought they were not entitled to do, to-wit, operate a private club, is that correct?

A. That is right.

Mr. Vosburg: That is all.

Redirect Examination

By Mr. Hamilton:

Q. I would like to ask you, Mr. Aldrich: The reason that the club was closed up and the reason they said they were operating as a private club was because, in December, 1945, an inspector, I believe, of the Liquor Commission, went to the club and was refused admittance, isn't that correct? A. That is right.

The Court: Who?

Mr. Hamilton: A liquor investigator, your Honor.

Q. And when you say that the license was revoked in January because it was operated as a private club, what you actually mean is that—Did you mean that it was attempted to be operated as a private club? Did you mean that it was attempted to be [111] operated as a private club when it was not licensed to do so?

Mr. Vosburg: Just a minute, your Honor.

The Court: Read the question.

(Question read.)

The Court: Answer.

A. I have no way of telling how the club was operating except from our investigator's report and the reason the Commission gave for revoking

(Testimony of Frederick C. Aldrich.)

the license. The license was revoked for the reason that the club refused service to persons entitled to patronize the premises of the licensee and operated the licensed premises as a private rather than a public establishment.

The Court: What have you just read from?

A. Read from the official record in the file of the Cozy Club.

The Court: The record of the Oregon Liquor Control Commission? A. Yes.

Mr. Vosburg: That is dated when?

A. That is dated January 19, 1945.

Mr. Vosburg: That is all.

Mr. Hamilton: That is all.

(Witness excused.) [112]

CARL S. CASTLE,

was thereupon produced as a witness on behalf of the Government and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hamilton:

Q. Please state your name?

A. Carl S. Castle.

Q. By whom are you employed?

A. Collector of Internal Revenue.

Q. In what capacity?

A. As a deputy collector.

Q. You are acquainted with the facts in this case, are you not?

(Testimony of Carl S. Castle.)

A. I made the investigation on it, yes.

Q. About what period of time did you conduct the investigation?

A. I would say between the months of June and August, 1944.

Q. 1944? A. Yes.

Q. In that investigation you had access to the books and records of the plaintiff, did you not?

A. Yes, sir.

Q. Did you make an investigation, and from those books derive certain figures as to so-called guest attendance on Saturday during certain months in 1943 and 1944? A. Yes, sir.

Q. I will ask you to state to the Court what information you [113] obtained along that line?

A. May I refer to my notes?

Q. Yes.

A. We were told by Mrs. Lambeth that this charge in question was a guest charge, in the amount of 75 cents and was made Saturday nights only, and the charge was not supposed to apply to so-called members, nor apply to servicemen.

Q. Speak louder.

A. We have made a compilation for the month of September, 1943, and through May, 1944, listing the total guest charge collected during those months, and then we have also made a compilation—

Q. You made a compilation of the guest charge collected for the Saturday nights during each month? A. Yes.

(Testimony of Carl S. Castle.)

Q. Then, on the basis of paying 75 cents per guest per head, you determined how many guests were present on Saturday nights during the month and how many persons each Saturday night?

A. Yes.

Q. Will you please read those figures to the Court?

A. For the month of September, 1943, the total charge—the total guest charge was \$205.00 and, as you have just explained, to save repetition, the number of persons per month 274, or per night, 68.

October, 1943, the guest charge is \$220.00. Persons per month, 293, and persons per night, 59.

November, 1943, the guest charge is \$245; persons per month, 326, and persons per night, 82.

December, 1943, the guest charge was \$243; persons per month, 324; persons per night, 81.

January, 1944: Guest charge, \$372.50; persons per month, 496; persons per night, 99.

February, 1944: Guest charge, \$234.00; persons per month, 311; persons per night, 78.

March, 1944; Guest charge, \$225.50; persons per month, 301; and persons per night, 75.

April, 1944: Guest charge, \$228.00; persons per month, 304; persons per night, 76.

May, 1944: Guest charge, \$349.75; persons per month 464; persons per night, 116.

Q. That means, to emphasize again the last figure you gave, persons per night, that means the

(Testimony of Carl S. Castle.)

average on each Saturday night in the month, doesn't it? A. Yes.

Q. Why do you only have those figures for September, 1943, to May, 1944?

A. That is the only record of guest charge that was in the books. The guest charge had definitely discontinued in May, 1944; at least, we have no further record.

Q. You mean there were no figures covering any other months in the books? [115]

A. Other than possibly there might have been some in April, 1944. Of that I am not sure. I think it was for a portion of the month.

Q. During the course of your investigation, did the plaintiff tell you what the capacity of the La Fiesta Club was, that is, the average seating capacity? A. Yes.

Q. What did she say it was?

A. In fact, we asked her and Mrs. Lambeth informed us the seating capacity was approximately 87 persons.

Q. 87 people? A. Yes.

Q. During the course of your investigation, did you determine from the plaintiff's books what the receipts of the La Fiesta Club were from January to July, 1944? A. Yes, sir.

Q. Do you have that in your notes?

A. Yes, sir.

Q. Would you please read to the Court that record?

A. For January, 1944, \$3,838.16; February, \$3,-

(Testimony of Carl S. Castle.)

685.61; March, \$4,549.10; April, \$4,656.50; May, \$5,045.45; June, \$4,790.50; and July, \$5,264.55.

Q. Yes. You have been sitting here. You heard the witness called by the plaintiff, Miss Shanahan, testify, did you? A. Yes, sir. [116]

The Court: What were those figures he just read?

Mr. Hamilton: Those were the figures taken from the books, the monthly receipts for the first months of 1944.

Mr. Vosburg: They are set forth in Paragraph 5.

The Court: What are they?

Mr. Hamilton: Gross receipts, as I understand it.

Mr. Vosburg: Paragraph 5 of the pre-trial order.

The Court: I don't care where they are. I want to know what they are.

A. Gross receipts, slot machines or music machines—

Mr. Hamilton: Q. You heard the witness, Miss Shanahan, called by the plaintiff; you heard her testify. I will ask you whether or not you had a conversation with her at the Stark Club on East Stark Street on the evening of March 31, 1948?

A. Yes, sir.

Q. At that time and place, did you question the witness, Miss Shanahan, as to when dancing was commenced at 929 Southwest Yamhill?

A. Yes.

(Testimony of Carl S. Castle.)

Q. What did she tell you?

A. That dancing was commenced immediately upon the club moving in to 929 Southwest Yamhill.

Q. She said that or words to that effect?

A. Yes, sir.

The Court: From your point of view, what difference does it [117] make when it began?

Mr. Hamilton: It makes a difference, may it please the Court. It makes a difference—If it should be held by the Court that the La Fiesta Club was a public club instead of a private club, then it makes a difference as to when dancing began because music alone does not constitute a performance; music plus dancing does constitute a public performance for profit and, therefore, if the club is a public club, and—

The Court: In other words, you only claim at most from the time when dancing began?

Mr. Hamilton: Yes, that is correct. That is when the cabaret tax would be assessed, from the time dancing began, and it makes a difference. If it is a public club, and if the Court finds that to be the fact, then if dancing commenced when they moved into the club—

The Court: When was that?

Mr. Hamilton: Approximately in May. Well, there has been a difference in the testimony—From May 17th to May 19th, 1943. Plaintiff admits that there was dancing after September 17, 1943, so

(Testimony of Carl S. Castle.)

we have four or five months where the question is material.

Q. Mr. Castle, she at that time told you dancing commenced immediately upon moving into 929 Southwest Yamhill?

A. Yes, we were given to understand that there was dancing there from the time they moved in. At least, that is the impression she gave us. [118]

Q. Do you remember questioning her concerning the nature of the club as a public or private club?

A. Yes, sir, we asked her.

Q. What did she tell you?

A. She told us to the effect that Mrs. Lambeth attempted to operate the club at 929 Southwest Yamhill as a private club for some three or four weeks but it did not work out and the idea was abandoned.

Mr. Hamilton: That is all.

Cross Examination

By Mr. Vosburg:

Q. These figures you gave on Saturday nights, showing what the average attendance would be, that is, of guests, you only worked those up until about May, 1944?

A. I believe we ran out of figures. Maybe I can tell you. I think we ran out of cover charges, as I recall.

Q. I thought you said they discontinued guest cards about May 1st, did you not?

A. No, you misunderstood me, I believe. I

(Testimony of Carl S. Castle.)

meant to say they must have discontinued the guest charge.

Q. The guest charge?

A. Guest charge. I seem to have run out of cover charge figures.

Q. Never mind, then. As I understand it, these figures are based on your assumption that cover charges collected could only relate to cover charges collected Saturday night? [119]

A. That is all we were told.

Q. It was based on the supposition that a cover charge was only collected Saturday night?

A. That is what Mrs. Lambeth told us.

Q. I don't care who told you. That is based on the supposition that the only time a cover charge was made was on a Saturday night, is that correct?

A. I hate to call it a supposition because that is what we were told what it is. That is the way we computed it, yes.

Q. If it should develop that these figures in the books represent the cover charge that was assessed against non-members, not only on Saturday night but on Friday night, your averages would be just cut in half, would they not? A. Yes.

Q. So, where you say that in October, 1943, you find the average is 59, if a cover charge was in fact assessed against non-members in excess of two to each member, it shows that there must have been 59 non-members as guests, but if we add to the figures you have given a cover charge for both

(Testimony of Carl S. Castle.)

Friday and Saturday night, roughly, you would cut your average in half and instead of 59, you would have, roughly, 30? A. Yes.

Q. And so on straight through your computation? A. Yes.

Q. You would just cut that in half, wouldn't you? [120] A. Yes, surely.

Mr. Vosburg: That is all.

Mr. Hamilton: That is all.

Mr. Hamilton: May it please the Court, I don't know whether it would be appropriate but, if possible, I would like to take the stand to impeach the witness Shanahan, called by the plaintiff.

Mr. Vosburg: May it please the Court—

The Court: Wait a minute, now. That is the worst practice a lawyer can get into. It is the greatest temptation. I learned early in my practice about two types of people. One was the type that you could always find showing up as a witness on one side or another. Another was the lawyer who never had a case in his life but what he wanted to be a witness in it.

That is why this Court and every other civil trial Court had to put a limitation on lawyers being witnesses. The limitations are different in degree. Sometimes they actually forbid a lawyer to be a witness. Usually they forbid him to argue the case, disqualify him arguing the case if he becomes a witness.

You have offered impeachment of her here by another man. You can take the stand if you want to but, if I were you, I would just resist the temp-

tation, not only in this case but every other case.

Mr. Hamilton: Yes, your Honor. The defendant rests.

Mr. Vosburg: I haven't the slightest question in my mind that what counsel said occurred is correct. I wish the Court to know it. I have no question in my mind but what he says occurred. He says this little girl was confused and I think that is correct.

The Court: I know how great the temptation is. Do you rest?

Mr. Hamilton: The defendant rests.

Mr. Vosburg: We have no rebuttal, your Honor.

The Court: Argue the case.

(Argument of counsel; case submitted.)

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, a Court Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on the 5th and 7th days of April, A. D. 1948, I reported in shorthand certain proceedings had in the above-entitled cause, that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 122, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said dates as aforesaid, and of the whole thereof.

Dated this 29th day of May, A. D. 1948.

/s/ IRA G. HOLCOMB,

Court Reporter.

[Endorsed]: Filed Aug. 20, 1948.

[Endorsed]: No. 12026. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Irene Ethel Lambeth, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed August 20, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals for the Ninth Circuit

No. 12026

THE UNITED STATES,

Appellant,

v.

IRENE ETHEL LAMBETH,

Appellee.

APPELLANT'S STATEMENT OF POINTS ON
WHICH IT INTENDS TO RELY ON APPEAL
AND DESIGNATION OF RECORD
FOR PRINTING

Comes now The United States, appellant above named, by Henry L. Hess, United States Attorney for the District of Oregon, and Floyd D. Hamilton, Assistant United States Attorney, and for a statement of points on which it intends to rely, says:

The statement of points to be urged by appellant in this Court are the same as those set forth in the statement of points filed with the District Court pursuant to Rule 75(d) of the Federal Rules of Civil Procedure.

Appellant designates for printing the entire record filed with this Court, with the exception of exhibits of both parties.

Dated this 27th day of September, 1948 at Portland, Oregon.

HENRY L. HESS,
United States Attorney for the
District of Oregon.

/s/FLOYD D. HAMILTON,
Assistant United States
Attorney.

(Affidavit of Service attached.)

[Endorsement]: Filed September 28, 1948. Paul P. O'Brien, Clerk.

